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SALUS POPULI SUPREMA LEX ESTO

"The welfare of the people shall be the supreme law."

ROBIN CARNAHAN

SECRETARY OF STATE

MISSOURI REGISTER

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Robin Carnahan

Administrative Rules Division
James C. Kirkpatrick State Information Center
600 W. Main
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(573) 751-4015

Director
Waylene W. Hiles

•

Editors
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Sally L. Reid

Associate Editor
Delane Jacquin

•

Publication Technician
Jacqueline D. White

•

Specialist
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•

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Documents will be accepted for filing on all regular workdays from 8:00 a.m. until 5:00 p.m. We encourage early filings to facilitate the timely publication of the *Missouri Register*. Orders of Rulemaking appearing in the *Missouri Register* will be published in the *Code of State Regulations* and become effective as listed in the chart above. Advance notice of large volume filings will facilitate their timely publication. We reserve the right to change the schedule due to special circumstances. Please check the latest publication to verify that no changes have been made in this schedule. To review the entire year's schedule, please check out the website at http://www.sos.mo.gov/adrules/pubsched.asp

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HOW TO CITE RULES AND RSMo

RULES—Cite material in the *Missouri Register* by volume and page number, for example, Vol. 28, *Missouri Register*, page 27. The approved short form of citation is 28 MoReg 27.

The rules are codified in the *Code of State Regulations* in this system—

Title	***Code of State Regulations***	**Division**	**Chapter**	**Rule**
1	CSR	10-	1.	010
Department		Agency, Division	General area regulated	Specific area regulated

They are properly cited by using the full citation , i.e., 1 CSR 10-1.010.

Each department of state government is assigned a title. Each agency or division within the department is assigned a division number. The agency then groups its rules into general subject matter areas called chapters and specific areas called rules. Within a rule, the first breakdown is called a section and is designated as (1). Subsection is (A) with further breakdown into paragraph 1., subparagraph A., part (I), subpart (a), item I. and subitem a.

RSMo—The most recent version of the statute containing the section number and the date.

Rules appearing under this heading are filed under the authority granted by section 536.025, RSMo 2000. An emergency rule may be adopted by an agency if the agency finds that an immediate danger to the public health, safety, or welfare, or a compelling governmental interest requires emergency action; follows procedures best calculated to assure fairness to all interested persons and parties under the circumstances; follows procedures which comply with the protections extended by the *Missouri* and the *United States Constitutions*; limits the scope of such rule to the circumstances creating an emergency and requiring emergency procedure, and at the time of or prior to the adoption of such rule files with the secretary of state the text of the rule together with the specific facts, reasons, and findings which support its conclusion that there is an immediate danger to the public health, safety, or welfare which can be met only through the adoption of such rule and its reasons for concluding that the procedure employed is fair to all interested persons and parties under the circumstances.

Rules filed as emergency rules may be effective not less than ten (10) days after filing or at such later date as may be specified in the rule and may be terminated at any time by the state agency by filing an order with the secretary of state fixing the date of such termination, which order shall be published by the secretary of state in the *Missouri Register* as soon as practicable.

All emergency rules must state the period during which they are in effect, and in no case can they be in effect more than one hundred eighty (180) calendar days or thirty (30) legislative days, whichever period is longer. Emergency rules are not renewable, although an agency may at any time adopt an identical rule under the normal rulemaking procedures.

Title 1—OFFICE OF ADMINISTRATION
Division 10—Commissioner of Administration
Chapter 15—Cafeteria Plan

EMERGENCY AMENDMENT

1 CSR 10-15.010 Cafeteria Plan. The commissioner is amending section (2) and deleting the current plan document and replacing it with an updated version.

PURPOSE: This amendment makes changes to the benefits available to state and other public entity employees under the state of Missouri's cafeteria plan (the plan).

EMERGENCY STATEMENT: This emergency amendment must be effective January 1, 2013, when the new plan year begins. If this amendment were not enacted as an emergency, employees would be denied the benefits of the amendment for the entire plan year because the amendment cannot be implemented midway through the plan year. This amendment provides for three (3) changes to the plan that, if not made, could result in significant adverse consequences. One change reduces the annual maximum that each employee can contribute to a health flexible spending account from five thousand dollars ($5,000) to two thousand five hundred dollars ($2,500). This change is required by federal law that passed in 2010. The Internal Revenue Service (IRS) did not issue interpretive guidance (Notice 2012-40) on the maximum contribution set forth in the law until May 30, 2012, and a legal challenge to the law was not complete until June 28, 2012. It was in the best interest of employees and the state not to reduce the maximum contribution until these issues were resolved. This emergency amendment will serve the compelling governmental interest of ensuring that the plan remains compliant with IRS requirements. Remaining compliant is critical because the plan currently serves more than sixty-four thousand (64,000) state of Missouri and other public employees and results in employee tax savings of approximately twenty-five percent (25%), as well as state Federal Insurance Contribution Act (FICA) tax savings of approximately 7.625%. Another change extends the time period during which employees participating in the health flexible spending account and dependent care assistance program can incur expenses for which they can obtain reimbursement. This extension of time, or grace period, will serve the compelling governmental interest of providing employees additional time to use funds in their accounts, rather than forfeit the funds. The grace period may also encourage more employees to participate in these benefits, thereby providing tax savings to them and the state at a time when budgets are extremely tight. The final change creates a limited scope health flexible spending account that allows employees who choose the high deductible health plan, and are therefore ineligible to participate in a health flexible spending account, to at least recognize tax savings on dental and vision expenses. This emergency amendment will also serve the compelling governmental interest of providing savings to employees and the state at a time when budgets are tight and opportunities for recognizing savings are therefore particularly critical.

*A proposed amendment which covers this same material is published in this issue of the **Missouri Register**. This emergency amendment complies with the protections extended by the **Missouri** and **United States Constitutions** and limits its scope to the circumstances creating the emergency. The Office of Administration follows procedures best calculated to assure fairness to all interested persons and parties under the circumstances. This emergency amendment was filed December 3, 2012, becomes effective January 1, 2013, and expires June 29, 2013.*

(2) The commissioner of administration shall maintain the cafeteria plan, the dependent care assistance plan, and the flexible medical benefits plan, in written form, denominated as the *[Missouri State Employees' Cafeteria Plan Document attached as Appendix A]* ***Cafeteria Plan for the Employees of the State of Missouri*** **included herein**.

*See **Cafeteria Plan for the Employees of the State of Missouri** printed with the proposed amendment on pages 8–79 of this issue of the **Missouri Register**.*

*AUTHORITY: section 33.103, RSMo Supp. [2010] **2012**. Original rule filed March 15, 1988, effective June 1, 1988. For intervening history, please consult the **Code of State Regulations**. Emergency amendment filed Dec. 3, 2012, effective Jan. 1, 2013, expires June 29, 2013. A proposed amendment covering this same material is published in this issue of the **Missouri Register**.*

Title 2—DEPARTMENT OF AGRICULTURE
Division 30—Animal Health
Chapter 10—Food Safety and Meat Inspection

EMERGENCY AMENDMENT

2 CSR 30-10.010 Inspection of Meat and Poultry. The department is amending section (2).

*PURPOSE: This amendment ensures that the current rule language clearly includes the most recent publication date of Title 9, the **Code***

of Federal Regulations *published January 1 of each calendar year for the Missouri Meat and Poultry Inspection Program to be in compliance with federal regulations and maintain "equal to" status as determined by the United States Department of Agriculture/Food Safety and Inspection Service.*

EMERGENCY STATEMENT: This emergency amendment is necessary to serve the compelling governmental interest to inform state agencies and the public of the actual year that the adoption of Title 9 ***Code of Federal Regulations*** *Parts 300 to end is being incorporated into state regulation. The United States Department of Agriculture/Food Safety and Inspection Service (USDA/FSIS) on November 1, 2012, asked for this clarification of the current rule language to ensure that it clearly includes the most recent date of publication of the federal regulations. USDA wants confirmation that the Missouri Meat and Poultry Inspection Program (MMPIP) has the authority to enforce all new requirements such as nutritional labeling of single ingredient products and ground or chopped meat and poultry products. The state Meat and Poultry Inspection (MPI) programs are required to operate in a manner and with authorities that are "at least equal to" the antemortem and postmortem inspection, reinspection, sanitation, recordkeeping, and enforcement provisions as provided for in the Federal Meat Inspection Act and the Poultry Products Inspection Act. State MPI programs must stay current with and be able to explain how their programs are equal to FSIS regulations to ensure their rules are "at least equal to" USDA/FSIS and in compliance with federal regulations. The inclusion of the year (January 2013) in the rule clarifies the exact year the most current federal meat and poultry inspection regulations are being incorporated by reference and that the most current regulations are enforced at the state level. This regulation applies to approximately thirty-six (36) state inspected meat and poultry establishments in Missouri and problems with clarity in the regulation could cause confusion in an industry, which as a whole, produce approximately $28,408,855,706 in Missouri economy. This emergency amendment is also necessary to protect the public health, safety, and/or welfare and a compelling governmental interest, which requires this emergency action. A proposed amendment, which covers the same material, is published in this issue of the* ***Missouri Register****. The scope of this emergency amendment is limited to the circumstances creating the emergency and complies with the protection extended in the* ***Missouri*** *and* ***United States Constitutions****. The Department of Agriculture believes this emergency amendment is fair to all interested persons and parties under the circumstances. This emergency amendment was filed on December 3, 2012, becomes effective January 1, 2013, and expires June 29, 2013.*

(2) The standards used to inspect Missouri meat and poultry slaughter and processing shall be those shown in Part 300 to end of Title 9, the *Code of Federal Regulations [published annually in January]* **(January 2013),** herein incorporated by reference and made a part of this rule as published by the United States Superintendent of Documents, 732 N Capitol Street NW, Washington, DC 20402-0001, phone: toll-free (866) 512-1800*[;]***,** DC area (202) 512-1800, website http://bookstore.gpo.gov. This rule does not incorporate any subsequent amendments or additions.

AUTHORITY: section 265.020, RSMo 2000. Original rule filed Sept. 14, 2000, effective March 30, 2001. For intervening history, please consult the ***Code of State Regulations****. Emergency amendment filed Dec. 3, 2012, effective Jan. 1, 2013, expires June 29, 2013. A proposed amendment covering this same material is published in this issue of the* ***Missouri Register****.*

Under this heading will appear the text of proposed rules and changes. The notice of proposed rulemaking is required to contain an explanation of any new rule or any change in an existing rule and the reasons therefor. This is set out in the Purpose section with each rule. Also required is a citation to the legal authority to make rules. This appears following the text of the rule, after the word "Authority."

Entirely new rules are printed without any special symbology under the heading of proposed rule. If an existing rule is to be amended or rescinded, it will have a heading of proposed amendment or proposed rescission. Rules which are proposed to be amended will have new matter printed in boldface type and matter to be deleted placed in brackets.

An important function of the *Missouri Register* is to solicit and encourage public participation in the rulemaking process. The law provides that for every proposed rule, amendment, or rescission there must be a notice that anyone may comment on the proposed action. This comment may take different forms.

If an agency is required by statute to hold a public hearing before making any new rules, then a Notice of Public Hearing will appear following the text of the rule. Hearing dates must be at least thirty (30) days after publication of the notice in the *Missouri Register.* If no hearing is planned or required, the agency must give a Notice to Submit Comments. This allows anyone to file statements in support of or in opposition to the proposed action with the agency within a specified time, no less than thirty (30) days after publication of the notice in the *Missouri Register*.

An agency may hold a public hearing on a rule even though not required by law to hold one. If an agency allows comments to be received following the hearing date, the close of comments date will be used as the beginning day in the ninety- (90-) day-count necessary for the filing of the order of rulemaking.

If an agency decides to hold a public hearing after planning not to, it must withdraw the earlier notice and file a new notice of proposed rulemaking and schedule a hearing for a date not less than thirty (30) days from the date of publication of the new notice.

Proposed Amendment Text Reminder:
Boldface text indicates new matter.
[Bracketed text indicates matter being deleted.]

Title 1—OFFICE OF ADMINISTRATION
Division 10—Commissioner of Administration
Chapter 15—Cafeteria Plan

PROPOSED AMENDMENT

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[APPENDIX A
MISSOURI STATE EMPLOYEES' CAFETERIA PLAN
DOCUMENT]

Cafeteria Plan
for the Employees of
the State of Missouri

Plan Document

Effective January 1, 2013
(with an original effective date of January 1, 1992)

Cafeteria Plan for the Employees of the State of Missouri

Plan Document

Table of Contents

1

Section 1 Introduction

1.1 Establishment of the Plan

The State of Missouri (the "Employer") hereby amends the State of Missouri Cafeteria Plan (the "Plan") effective January 1, 2013 (the "Effective Date"). The original Plan was effective January 1, 1992.

1.2 Purpose of the Plan

This Plan allows an Employee to participate in the following Benefit Options:

- **Premium Payment Plan (PPP)** to make pre-tax Salary Reduction Contributions to pay the Employee's share of the premium or contribution for the Health Plan.
- **Health Flexible Spending Account (Health FSA)** to make pre-tax Salary Reduction Contributions to an account for reimbursement of certain Health Care Expenses.
- **Limited Scope Health Flexible Spending Account (Limited Scope Health FSA)** to make pre-tax Salary Reduction Contributions to an account for reimbursement of Dental and Vision Expenses.
- **Dependent Care Assistance Program (DCAP)** to make pre-tax Salary Reduction Contributions to an account for reimbursement of certain Dependent Care Expenses.
- **Health Savings Account Contribution Benefit (HSA Contribution Benefit)** to make pre-tax Salary Reduction Contributions to a Health Savings Account.

1.3 Legal Status

This Plan is intended to qualify as a "cafeteria plan" under the Code §125, and regulations issued thereunder and shall be interpreted to accomplish that objective.

The **Health FSA** and the **Limited Scope Health FSA** are intended to qualify as self-insured health reimbursement plans under Code §105, and the Health Care Expenses reimbursed are intended to be eligible for exclusion from participating Employees' gross income under Code §105(b).

The **DCAP** is intended to qualify as a dependent care assistance program under Code §129, and the Dependent Care Expenses reimbursed are intended to be eligible for exclusion from participating Employees' gross income under Code §129(a).

The **HSA Contribution Benefit** is intended to meet all requirements of §223 of the Code.

Although reprinted within this document, the **Health FSA**, the **Limited Scope Health FSA**,the **DCAP** and the **HSA Contribution Benefit** are separate plans for purposes of administration and all reporting and nondiscrimination requirements imposed by Code §§105 and 129. The **Health FSA** and the **Limited Scope Health FSA** are also separate plans for purposes of applicable provisions of COBRA and HIPAA.

1.4 Capitalized Terms

Many of the terms used in this document begin with a capital letter. These terms have special meaning under the Plan and are defined in the Glossary at the end of this document or in other relevant Sections. When reading the provisions of the Plan, please refer to the Glossary at the end of this document. Becoming familiar with the terms defined there will provide a better understanding of the procedures and Benefits described.

Section 2
General Information

Name of the Cafeteria Plan	State of Missouri Cafeteria Plan
Name of Employer	State of Missouri
Address of Plan	Office of Administration, P.O. Box 809, Jefferson City, MO 65102-0809
Plan Administrator	State of Missouri/Office of Administration
Plan Sponsor and its IRS	State of Missouri/Office of Administration
Employer Identification Number	44-6000987
Named Fiduciary & Agent for Service of Legal Process	State of Missouri
Type of Administration	The Plan is administered by the Plan Administrator with Benefits provided in accordance with the provisions of the State of Missouri Cafeteria Plan. It is not financed by an insurance company and Benefits are not guaranteed by a contract of insurance. State of Missouri may hire a third party to perform some of its administrative duties such as claim payments and enrollment.
Plan Number	501
Benefit Option Year	The twelve-month period ending December 31.
Plan Effective Date	January 1, 2013, with an original effective date of January 1, 1992
Claims Administrator	Application Software, Inc., dba ASI, dba ASIFlex
Plan Renewal Date	January 1
Internal Revenue Code and Other Federal Compliance	It is intended that this Plan meet all applicable requirements of the Internal Revenue Code of 1986 (the "Code") and other federal regulations. In the event of any conflict between this Plan and the Code or other federal regulations, the provisions of the Code and the federal regulations shall be deemed controlling, and any conflicting part of this Plan shall be deemed superseded to the extent of the conflict.
Discretionary Authority	The Plan Administrator shall perform its duties as the Plan Administrator and in its sole discretion, shall determine the appropriate courses of action in light of the reason and purpose for which this Plan is established and maintained. In particular, the Plan Administrator shall have full and sole

discretionary authority to interpret all Plan documents, and make all interpretive and factual determinations as to whether any individual is entitled to receive any Benefit under the terms of this Plan. Any construction of the terms of any Plan document and any determination of fact adopted by the Plan Administrator shall be final and legally binding on all parties. Any interpretation shall be subject to review only if it is arbitrary, capricious, or otherwise an abuse of discretion.

Any review of a final decision or action of the Plan Administrator shall be based only on such evidence presented to or considered by the Plan Administrator at the time it made the decision that is the subject of review. Accepting any Benefits or making any claim for Benefits under this Plan constitutes agreement with and consent to any decisions that the Plan Administrator makes in its sole discretion and further constitutes agreement to the limited standard and scope of review described by this section -- Section 2.

Section 3
Benefit Options and Method of Funding

3.1 Benefits Offered

Each Employee may elect to participate in one or more of the following Benefits:

- **Premium Payment Plan (PPP)** as described in Schedule A.
- **Health Flexible Spending Account (Health FSA)** as described in Schedule B.
- **Health Savings Account Contribution Benefit (HSA Contribution Benefit)** as described in Schedule C.
- **Dependent Care Assistance Program (DCAP)** as described in Schedule D.
- **Limited Scope Health Flexible Spending Account (Limited Scope Health FSA)** as described in Schedule E.

Benefits under the Plan shall not be provided in the form of deferred Compensation.

3.2 Employer and Participant Contributions

- **Employer Contributions.** The Employer may, but is not required to, contribute to any of the Benefit Options. There are no Employer Contributions for the **PPP** under this Plan; however, if the Participant elects the **PPP** as described in Schedule A, the Employer may contribute toward the Health Plan as provided in the respective plan or policy of the Employer.
- **Participant Contributions.** The Employer shall withhold from a Participant's Compensation by Salary Reduction on a pre-tax basis, or with after-tax deductions, an amount equal to the Contributions required for the Benefits elected by the Participant under the Salary Reduction Agreement. The maximum amount of Salary Reductions shall not exceed the aggregate cost of the Benefits elected.

3.3 Computing Salary Reduction Contributions

- **Salary Reductions per Pay Period.** The Participant's Salary Reduction is an amount equal to:
    - The annual election for such Benefits payable on a semi-monthly or monthly basis in the Period of Coverage;
    - An amount otherwise agreed upon between the Employer and the Participant; or
    - An amount deemed appropriate by the Plan Administrator. (Example: in the event of a shortage of reducible Compensation, amounts withheld and the Benefits to which Salary Reductions are applied may fluctuate.)

- **Salary Reductions Following a Change of Elections.** If the Participant changes his or her election under the **PPP, Health FSA, Limited Scope Health FSA**, or **DCAP,** as permitted under the Plan, the Salary Reductions will be, for the Benefits affected, calculated as follows:
  - An amount equal to:
    - The new annual amount elected pursuant to the Method of Timing and Elections section below;
    - Less the aggregate Contributions, if any, for the period prior to such election change;
    - Payable over the remaining term of the Period of Coverage commencing with the election change;
  - An amount otherwise agreed upon between the Employer and the Participant; or
  - An amount deemed appropriate by the Plan Administrator. (Example: in the event of a shortage of reducible Compensation, amounts withheld and the Benefits to which Salary Reductions are applied may fluctuate.)
- **Salary Reductions Considered Employer Contributions for Certain Purposes.** Salary Reductions to pay for the Participant's share of the Contributions for Benefit Options elected for purposes of this Plan and the Code are considered Employer Contributions.
- **Salary Reduction Balance Upon Termination of Coverage.** If, as of the date that coverage under this Plan terminates, a Participant's year-to-date Salary Reductions exceed or are less than the required Contributions necessary for Benefit Options elected up to the date of termination, the Employer will either return the excess to the Participant as additional taxable wages or recoup the amount due through Salary Reduction amounts from any remaining Compensation.
- **After-Tax Contributions for PPP.** After-tax Contributions for the Health Plan will be paid outside of this Plan.

3.4 **Funding This Plan**

- **Benefits Paid from General Assets.** All of the amounts payable under this Plan shall be paid from the general assets of the Employer. Nothing herein will be construed to require the Employer nor the Plan Administrator to maintain any fund or to segregate any amount for the Participant's benefit. Neither the Participant, nor any other person, shall have any claim against, right to, or security or other interest in any fund, account or asset of the Employer from which any payment under this Plan may be made. There is no trust or other fund from which Benefits are paid. While the Employer has complete responsibility for the payment of Benefits out of its general assets, it may hire a third party administrator to perform some of its administrative duties such as claims payments and enrollment.
- **Participant Bookkeeping Account.** While all Benefits are to be paid from the general assets of the Employer, the Employer will keep a bookkeeping account in the name of each Participant. The bookkeeping account is used to track allocation and payment of Plan Benefits. The Plan

Administrator will establish and maintain under each Participant's bookkeeping account a subaccount for each Benefit Option elected by each Participant.

- **Maximum Contributions.** The maximum Contributions that may be made under this Plan for the Participant are the total of the maximums that may be elected for the **PPP** as described in Schedule A, **Health FSA** as described in Schedule B, **HSA Contribution Benefit** as described in Schedule C, the **DCAP** as described in Schedule D, and the **Limited Scope Health FSA** as described in Schedule E.

Section 4
Eligibility and Participation

4.1 Eligibility to Participate

An individual is eligible to participate in this Plan if such individual meets the definition of Employee as set forth in the Glossary.

Eligibility requirements to participate in the individual Benefit Options may vary from the eligibility requirements to participate in this Plan.

4.2 Required Salary Reduction Agreement

To participate in the **Health FSA, Limited Scope Health FSA,** or **DCAP**, an Employee must complete, sign and return to the Plan Administrator a Salary Reduction Agreement by the deadline designated by the Plan Administrator. If an Employee fails to return a Salary Reduction Agreement, the Employee is deemed to have elected cash and will not be allowed to change such election until the next Open Enrollment unless the Employee experiences an event permitting an election change mid-year.

The Employee may begin participation on the 1st of the month coincident with or next following the date on which the Employee has met the Plan's eligibility requirements or in accordance with the Enrollment requirements each year.

4.3 Termination of Participation

A Participant will terminate participation in this Plan upon the earlier of:

- The expiration of the Period of Coverage for which the Employee has elected to participate unless during the Open Enrollment Period for the next Plan Year the Employee elects to continue participating;
- The termination of this Plan; or
- The date on which the Employee ceases to be an Employee because of retirement, termination of employment, layoff, reduction in hours, or any other reason. Eligibility may continue beyond such date for purposes of COBRA coverage, where applicable as set forth in the respective Schedule attached hereto, as may be permitted by the Plan Administrator on a uniform and consistent basis, but not beyond the end of the current Plan Year.

False or Fraudulent Claims. The Plan Administrator has the authority to terminate participation in the Plan if it has been determined that a Participant has filed a false or fraudulent claim for Benefits. In addition, an Employee filing a false or fraudulent claim is subject to disciplinary action, up to and including termination of employment.

Termination of participation in this Plan will automatically revoke the Participant's participation in the elected Benefit Options, according to the terms thereof.

4.4 Rehired Employees

If a Participant terminates employment with the Employer for any reason, including, but not limited to, disability, retirement, layoff, leave of absence without pay, or voluntary resignation, and then is rehired within the same Plan Year and within 30 days or less of the date of termination of employment, the Employee will be reinstated with the same elections that the Participant had prior to termination. If the Employer rehires a former Participant within the same Plan Year but more than 30 days following termination of employment and the Participant is otherwise eligible to participate in the Plan, then the individual may make new elections as a new hire.

4.5 Eligibility Rules Regarding the Health FSA

An Employee enrolled in a Health Savings Account (HSA) is not eligible to enroll in the **Health FSA** but is eligible to enroll in the **Limited Scope Health FSA. An Employee is only allowed to enroll in either the Health FSA** or the **Limited Scope Health FSA**, not both.

4.6 Eligibility Rules Regarding the HSA Contribution Benefit

An Employee must be an HSA Employee to elect to participate in the **HSA Contribution Benefit Plan.**

Only Employees who satisfy the following conditions may be considered an HSA Employee:

- Covered under a qualifying High Deductible Health Plan (HDHP) maintained by the Employer;
- Opened an HSA with the custodian chosen by the Employer;
- Not covered under any other non-HDHP maintained by one Employer that is determined by the Employer to offer disqualifying health coverage;
- Not claimed as a tax dependent by anyone else;
- Not enrolled in Medicare coverage; and
- Eligible to participate in the Plan.

4.7 FMLA Leaves Of Absence

Health Benefits. Notwithstanding any provision to the contrary in this Plan, if a Participant goes on a qualifying leave under FMLA then to the extent required by FMLA, the Participant will be entitled to continue the Benefits that provide health coverage on the same terms and conditions as if the Participant were still an active Employee. For example, the Employer will continue to pay its share of the Contribution to the extent the Participant opts to continue coverage. In the event of unpaid FMLA leave, a Participant may elect to continue such Benefits.

If the Participant elects to continue coverage while on FMLA leave, then the Participant may pay his or her share of the Contribution:

- With after-tax dollars, by sending monthly payments to the Employer's designee by the due date established by the Employer;

- With pre-tax dollars, by having such amounts withheld from the Participant's ongoing Compensation, if any; or

- By pre-paying all or a portion of the Contribution for the expected duration of the leave on a pre-tax Salary Reduction basis out of pre-leave Compensation.

To pre-pay the Contribution, the Participant must make a special election to that effect prior to the date that such Compensation would normally be made available. Pre-tax dollars may not be used to fund coverage during the next Plan Year.

Coverage will terminate if Contributions are not received by the due date established by the Employer. If a Participant's coverage ceases while on FMLA leave for any reason, including for non-payment of Contributions, the Participant will be entitled to re-enter upon return from such leave on the same basis as the Participant was participating in the Plan prior to the leave, or as otherwise required by the FMLA.

A Participant whose coverage ceased under any of the aforementioned plans will be entitled to elect whether to be reinstated in such plans at the same coverage level as in effect before the FMLA leave with increased Contributions for the remaining Period of Coverage, or at a coverage level that is reduced pro-rata for the period of FMLA leave during which the Participant did not pay Contributions. If a Participant elects a coverage level that is reduced pro-rata for the period of FMLA leave, the amount withheld from a Participant's Compensation on a payroll-by-payroll basis for the purpose of paying for his or her Contributions will be equal to the amount withheld prior to the period of FMLA leave.

Non-Health Benefits. If a Participant goes on a qualifying leave under the FMLA, then entitlement to non-health benefits (such as **DCAP** Benefits) is to be determined by the Employer's policy for providing such Benefits when the Participant is on leave not qualified as an FMLA leave of absence, as described below. If such policy permits a Participant to discontinue Contributions while on leave, then the Participant will, upon returning from leave, be required to repay the Contributions not paid by the Participant during the leave. Payment shall be withheld from the Participant's Compensation either on a pre-tax or after-tax basis, as may be agreed upon by the Plan Administrator and the Participant or as the Plan Administrator otherwise deems appropriate.

4.8 Non-FMLA Leaves of Absence

If a Participant goes on an unpaid leave of absence that does not affect eligibility, then the Participant will continue to participate and the Contributions due for the Participant will be paid by pre-payment before going on leave, by after-tax Contributions while on leave or with catch-up Contributions after the leave ends, as may be determined by the Plan Administrator.

If a Participant goes on an unpaid leave that affects eligibility, the election change rules set forth by this Plan will apply. To the extent COBRA applies, the Participant may continue coverage under COBRA.

4.9 Death

A Participant's beneficiaries or representative of the Participant's estate, may submit claims for expenses that the Participant incurred through the date of death. A Participant may designate a specific beneficiary for this purpose. If no beneficiary is specified, the Plan Administrator or its designee may designate the Participant's Spouse, another Dependent, or representative of the estate. Claims incurred

by the Participant's covered Spouse or any other of the Participant's covered Dependents prior to the end of the month in which the Participant dies may also be submitted for reimbursement.

4.10 COBRA

Under the COBRA rules, as discussed in the attached Schedules B and C, where applicable, the Participant's Spouse and Dependents may be able to continue to participant under the **Health FSA** through the end of the Period of Coverage in which the Participant dies. The Participant's Spouse and Dependents may be required to continue making Contributions to continue their participation.

4.11 USERRA

Notwithstanding any provision to the contrary in this Plan, if a Participant goes on a qualifying leave under USERRA, then to the extent required by USERRA, the Employer will continue the Benefits that provide health coverage on the same terms and conditions as if the Participant were still an active Employee. In the event of unpaid USERRA leave, a Participant may elect to continue such Benefits during the leave.

If the Participant elects to continue coverage while on USERRA leave, then the Participant may pay his or her share of the Contribution with:

- After-tax dollars, by sending monthly payments to the Employer by the due date established by the Employer; or
- Pre-tax dollars, by having such amounts withheld from the Participant's ongoing Compensation, if any, including unused sick days and vacation days.

Coverage will terminate if Contributions are not received by the due date established by the Employer. If a Participant's coverage ceases while on USERRA leave for any reason, including for non-payment of Contributions, the Participant will be entitled to re-enter such Benefit upon return from such leave on the date of such resumption of employment and will have the same opportunities to make elections under this Plan as persons returning from non-USERRA leaves. Regardless of anything to the contrary in this Plan, an Employee returning from USERRA leave has no greater right to Benefits for the remainder of the Plan Year than an Employee who has been continuously working during the Plan Year.

Section 5
Method of Timing and Elections

5.1 Initial Election

An Employee must complete, sign and return a Salary Reduction Agreement within the election-period set forth therein to enroll in the Benefit Options, other than the **PPP**.

Unless otherwise specified by the Employer, an Employee who first becomes eligible to participate in the Plan mid-year will commence participation on the 1st day of the month coinciding with or after the date the Employee completes, signs and returns a Salary Reduction Agreement or completes a Salary Reduction Agreement using the electronic system produced by the Employer (if any), within the election period set forth therein.

Eligibility for Benefits shall be subject to the additional requirements, if any, specified in the applicable Benefit Option (see Glossary for definition). The provisions of this Plan are not intended to override any exclusions, eligibility requirements or waiting periods specified in the applicable Benefit Options.

5.2 Open Enrollment

During each Open Enrollment Period, the Plan Administrator shall make available a Salary Reduction Agreement to each Employee who is eligible to participate in the Plan. The Salary Reduction shall enable the Employee to elect to participate in the Benefit Options for the next Plan Year, and to authorize the necessary Salary Reductions to pay for the Benefits elected. The Employee must complete sign and return the Salary Reduction Agreement or complete an election using the electronic system provided by the Employer, if any, to the Plan Administrator on or before the last day of the Open Enrollment Period. There is an exception of automatic elections in the PPP.

If an Employee makes an election to participate during an Open Enrollment Period, then the Employee will become a Participant on the first day of the next Plan Year.

The Employer may, in lieu of a Salary Reduction Agreement, provide an electronic method for Employees to use to make elections. The Employer may require Employees to use the electronic system to make elections. Use of an electronic system will have the same effect as a signed Salary Reduction Agreement.

5.3 Failure To Elect

If an Employee fails to complete, sign and return a Salary Reduction Agreement or fails to complete an election using the electronic system (if any) provided by the Employer within the time described in the Elections paragraphs as discussed immediately above, then the Employee will be deemed to have elected to receive his or her entire Compensation in cash (excluding the PPP). The Employer provides for an automatic election for the **PPP**, therefore, the Employee will have also agreed to a Salary Reduction for such Employee's Contribution to the **PPP**.

Such Employee may not enroll in the Plan:

- Until the next Open Enrollment Period; or

- Until an event occurs that would justify a mid-year election change as described in the Irrevocability of Election and Exceptions section below.

Section 6
Irrevocability of Elections and Exceptions

6.1 Irrevocability of Elections

A Participant's election under the Plan is irrevocable for the duration of the Period of Coverage to which it relates, except as described in this Section.

The irrevocability rules do not apply to the **HSA Contribution Benefit** election.

The rules regarding irrevocability of elections and exceptions are quite complex. The Plan Administrator will interpret these rules in accordance with prevailing IRS guidance.

6.2 Procedure for Making New Election If Exception to Irrevocability Applies

- **Timing for Making New Election if Exception to Irrevocability Applies.** A Participant may make a new election within 30 days of the occurrence of an event described in section 6.4 below, if the election under the new Salary Reduction Agreement is made on account of and corresponds to the event. A Change in Status, as defined below, that automatically results in ineligibility in the Health Plan shall automatically result in a corresponding election change, whether or not requested.

- **Effective Date of New Election.** Elections made pursuant to this Section shall be effective on the 1st of the month following or coinciding with the Plan Administrator's receipt and approval of the election request for the balance of the Period of Coverage following the change of election unless a subsequent event allows for a further election change. Except as provided in "Certain Judgments, Decrees and Orders" or for HIPAA special enrollment rights in the event of birth, adoption, or placement for adoption, all election changes shall be effective on a prospective basis only.

- **Changes.** For subsequent Plan Years, the maximum and minimum dollar limit may be changed by the Plan Administrator and shall be communicated to Employees through the Salary Reduction Agreement or other document.

- **Effect on Maximum Benefits.** Any change in an election affecting annual Contributions to the **Health FSA, Limited Scope Health FSA,** or **DCAP** also will change the maximum reimbursement Benefits for the balance of the Period of Coverage commencing with the election change. Such maximum reimbursement Benefits for the balance of the Period of Coverage shall be calculated by adding:

    - Any Contributions made by the Participant as of the end of the portion of the Period of Coverage immediately preceding the change in election; to

    - The total Contributions scheduled to be made by the Participant during the remainder of such Period of Coverage to the Benefit Option; reduced by

    - All reimbursements made during the entire Period of Coverage.

6.3 **Change in Status Defined**

A Participant may make a new election that corresponds to a gain or loss of eligibility and coverage under this Plan or under any other plan maintained by the Employer or a plan of the Spouse's or Dependent's employer that was caused by the occurrence of a Change in Status. A Change in Status is any of the events described below, as well as any other events included under subsequent changes to Code §125 or regulations issued thereunder, which the Plan Administrator, in its sole discretion and on a uniform and consistent basis, determines are permitted under IRS regulations and under this Plan:

- **Legal Marital Status.** A change in a Participant's legal marital status including marriage, death of a Spouse, divorce, legal separation or annulment;
- **Number of Dependents.** Events that change a Participant's number of Dependents, including birth, death, adoption, and placement for adoption. In the case of the **DCAP**, a change in the number of Qualifying Individuals as defined in Code §21(b)(1);
- **Employment Status.** Any of the following events that change the employment status of the Participant, Spouse or Dependents:
    - A termination or commencement of employment;
    - A commencement of or return from an unpaid leave of absence;
    - A change in worksite; or
    - If the eligibility conditions of this Plan or another employee benefit plan of the Participant, Spouse or Dependent depend on the employment status of that individual and there is a change in that individual's status with the consequence that the individual becomes, or ceases to be, eligible under this Plan or another employee benefit plan;
- **Dependent Eligibility Requirements.** An event that causes a Dependent to satisfy or cease to satisfy the Dependent eligibility requirements for a particular Benefit; and
- **Change in Residence.** A change in the place of residence of the Participant, Spouse or Dependent(s).

6.4 **Events Permitting Exception to Irrevocability Rule**

A Participant may change an election as described below upon the occurrence of the stated events for the applicable Benefit Option.

The following rules shall apply to all Benefit Options except where expressly limited below.

- **Open Enrollment Period.** A Participant may change an election during the Open Enrollment Period.

- **Termination of Employment.** A Participant's election will terminate upon termination of employment as described in the Eligibility and Participation section above.

- **Leave of Absence.** A Participant may change an election upon a leave of absence as described in the Eligibility and Participation section above.

- **Change in Status.** *(Applies to the **PPP, Health FSA, Limited Scope Health FSA,** and **DCAP** as limited below.)* A Participant may change the actual or deemed election under the Plan upon the occurrence of a Change in Status, but only if such election change corresponds with a gain or loss of eligibility and coverage under a plan of the Employer or a plan of the Spouse's or Dependent's employer, referred to as the general consistency requirement.

  A Change in Status that affects eligibility for coverage also includes a Change in Status that results in an increase or decrease in the number of an Employee's family members who may benefit from the coverage.

  The Plan Administrator, on a uniform and consistent basis, shall determine, based on prevailing IRS guidance, whether a requested change satisfies the general consistency requirement. Assuming that the general consistency requirement is satisfied, a requested election change must also satisfy the following specific consistency requirements in order for a Participant to be able to alter elections based on the specified Change in Status:

  - **Loss of Spouse or Dependent Eligibility.** For a Change in Status involving a Participant's divorce, annulment or legal separation, the death of a Spouse or a Dependent, or a Dependent's ceasing to satisfy the eligibility requirements for coverage, a Participant may only elect to cancel health plan coverage and deduction plans offered under the Voluntary Payroll Vendors for:

    - The Spouse involved in the divorce, annulment, or legal separation;

    - The deceased Spouse or Dependent; or

    - The Dependent that ceased to satisfy the eligibility requirements.

    Canceling coverage for any other individual under these circumstances fails to correspond with that Change in Status.

    Notwithstanding the foregoing, if the Participant or his or her Spouse or Dependent becomes eligible for COBRA or similar health plan continuation coverage under the Employer's plan, then the Participant may increase his or her election to pay for such coverage. This rule does not apply to a Participant's Spouse who becomes eligible for COBRA or similar coverage as a result of divorce, annulment, or legal separation.

  - **Gain of Coverage Eligibility Under Another Employer's Plan.** When a Participant, Spouse or Dependent gains eligibility for coverage under a cafeteria plan or qualified benefit plan of the employer of that Participant's Spouse or Dependent, a Participant may elect to terminate or decrease coverage for that individual only if coverage for that individual becomes effective or is increased under the Spouse's or Dependent's employer's plan. The Plan Administrator may rely on a Participant's certification that the Participant has obtained

or will obtain coverage under the Spouse's or Dependent's employer's plan, unless the Plan Administrator has reason to believe that the Participant's certification is incorrect.

- **Special Consistency Rule for DCAP Benefits.** With respect to the **DCAP**, the Participant may change or terminate the Participant's election upon a Change in Status if:
  - Such change or termination is made on account of and corresponds with a Change in Status that affects eligibility for coverage under an Employer's plan; or
  - The election change is on account of and corresponds with a Change in Status that affects eligibility of Dependent Care Expenses for the tax exclusion under Code §129.

- **HIPAA Special Enrollment Rights** (*Applies to the **PPP** only*). If the Participant, the Participant's Spouse or Dependent is entitled to special enrollment rights under a group health plan as required by HIPAA, then the Participant may revoke a prior election for group health plan coverage and make a new election provided that the election change corresponds with such HIPAA special enrollment right. As more specifically defined by HIPAA, a special enrollment right will arise in the following circumstances:
  - The Participant, Spouse or Dependent declined to enroll in group health plan coverage because the Participant, the Participant's Spouse or Dependent had coverage, and eligibility for such coverage is subsequently lost because the coverage was provided under COBRA and the COBRA coverage was exhausted; or the coverage was non-COBRA coverage and the coverage terminated due to loss of eligibility for coverage or the employer contributions for the coverage were terminated;
  - The Participant acquired a new Dependent as a result of marriage, birth, adoption or placement for adoption; or
  - The Employee or Dependents who are eligible but did not enroll for coverage when initially eligible and:
    - The Employee or Dependent's Medicaid or Children's Health Insurance Program (CHIP) coverage terminated as a result of loss of eligibility and the Employee requests coverage under the Plan within 60 days after the termination; or
    - The Employee or Dependent becomes eligible for a premium assistance subsidy under Medicaid or CHIP, and the employee requests coverage under the Plan within 60 days after eligibility is determined.

  An election to add previously eligible Dependents as a result of the acquisition of a new Spouse or Dependent child shall be considered to be consistent with the special enrollment right. An election change due to birth, adoption, or placement for adoption of a new Dependent child may, subject to the group health plan, be effective retroactively for up to 30 days.

- **Certain Judgments, Decrees and Orders.** (*Applies to the **PPP, Health FSA, Limited Scope Health FSA, but does not apply to the DCAP***). If a judgment, decree, or order resulting from a divorce, legal separation, annulment or change in legal custody, including a Qualified Medical Child

Support Order (QMCSO) requires accident or health coverage, including an election for **Health FSA** Benefits for a Participant's Dependent child, a Participant may:

- Change an election to provide coverage for the Dependent child provided that the order requires the Participant to provide coverage; or

- Change an election to revoke coverage for the Dependent child if the order requires that another individual provide coverage under that individual's plan and such coverage is actually provided.

- **Medicare and Medicaid.** (*Applies to the **PPP**, **Health FSA**, **Limited Scope Health** FSA, but does not apply to the **DCAP***). If a Participant, Spouse or Dependent is enrolled in a Benefit under this Plan and becomes entitled to Medicare or Medicaid (other than coverage consisting solely of benefits under Section 1928 of the Social Security Act providing for pediatric vaccines), the Participant may prospectively reduce or cancel the Health Plan covering the person, and the **Health FSA** coverage may be cancelled but not reduced. However, such cancellation will not be effective to the extent that it would reduce future contributions to the **Health FSA** or the **Limited Scope Health FSA** to a point where the total contributions for the Plan Year are less that the amount already reimbursed for the Plan Year. Further, if a Participant, Spouse, or Dependent who has been entitled to Medicare or Medicaid loses eligibility for such coverage, the Participant may prospectively elect to commence or increase the **Health FSA** or the **Limited Scope Health FSA** coverage.

- **Change in Cost.** *(Applies to the **PPP** and **DCAP** as limited below, but does not apply to the **Health FSA** or the **Limited Scope Health FSA**).* For purposes of this Section, "similar coverage" means coverage for the same category of Benefits for the same individuals.

  - **Insignificant Cost Changes.** The Participant is required to increase his or her elective Contributions to reflect insignificant increases in the required Contribution for the Benefit Options, and to decrease the elective Contributions to reflect insignificant decreases in the required Contribution. The Plan Administrator, in its sole discretion and on a uniform and consistent basis, will determine whether an increase or decrease is insignificant based upon all the surrounding facts and circumstances, including but not limited to the dollar amount or percentage of the cost change. The Plan Administrator, on a reasonable and consistent basis, will automatically make this increase or decrease in affected Participants' elective Contributions on a prospective basis.

  - **Significant Cost Increases.** If the Plan Administrator determines that the cost charged to an Employee for a Benefit significantly increases during a Period of Coverage, the Participant may:

    - Make a corresponding prospective increase to elective Contributions by increasing Salary Reductions;

    - Revoke the election for that coverage, and in lieu thereof, receive on a prospective basis coverage under another Benefit Option that provides similar coverage; or

- Terminate coverage going forward if there is no other Benefit Option available that provides similar coverage.

The Plan Administrator, in its sole discretion and on a uniform and consistent basis, will decide whether a cost increase is significant.

- **Significant Cost Decreases.** If the Plan Administrator determines that the cost of any Benefit (such as the premium for the Health Plan) significantly decreases during a Period of Coverage, then the Plan Administrator may permit the following election changes:

  - Participants enrolled in that Benefit Option may make a corresponding prospective decrease in their elective contributions by decreasing Salary Reductions;

  - Participants who are enrolled in another benefit package option may change their election on a prospective basis to elect the Benefit Option that has decreased in cost; or

  - Employees who are otherwise eligible may elect the Benefit Option that has decreased in cost on a prospective basis, subject to the terms and limitations of the Benefit Option. The Plan Administrator, in its sole discretion and on a uniform and consistent basis, will decide whether a cost decrease is significant.

- **Limitation on Change in Cost Provisions for DCAP Benefits.** The above "Change in Cost" provisions apply to **DCAP** Benefits only if the cost change is imposed by a dependent care provider who is not a relative of the Employee.

- **Change in Coverage.** (*Applies to the **PPP** and **DCAP**, but not to the **Health FSA** or the **Limited Scope Health FSA***). The definition of "similar coverage" applied in the Change of Cost provision above also applies here.

  - **Significant Curtailment.** Coverage under a Plan is deemed to be "significantly curtailed" only if there is an overall reduction in coverage provided under the Plan to constitute reduced coverage generally. If coverage is "significantly curtailed," Participants may elect coverage under a Benefit Option that provides similar coverage. In addition, if the coverage curtailment results in a "Loss of Coverage" as defined below, Participants may drop coverage if no similar coverage is offered by the Employer. The Plan Administrator, in its sole discretion and on a uniform and consistent basis, will decide whether a curtailment is "significant," and whether a Loss of Coverage has occurred in accordance with prevailing IRS guidance.

    - **Significant Curtailment Without Loss of Coverage.** If the Plan Administrator determines that a Participant's coverage under a Benefit Option (or the Participant's, Spouse's or Dependent's coverage under the respective employer's plan) is significantly curtailed without a Loss of Coverage during a Period of Coverage, the Participant may revoke an election for the affected coverage and prospectively elect coverage under another Benefit Option if offered, that provides similar coverage.

    - **Significant Curtailment With a Loss of Coverage.** If the Plan Administrator determines that a Participant's coverage under this Plan (or the Participant's, Spouse's or Dependent's coverage under the respective employer's plan) is significantly curtailed,

and such curtailment results in a Loss of Coverage during a Period of Coverage, the Participant may revoke an election for the affected coverage, and may either prospectively elect coverage under another Benefit Option that provides similar coverage or drop coverage if no other Benefit Option providing similar coverage is offered by the Employer.

- **Definition of Loss of Coverage.** For purposes of this Section, a "Loss of Coverage" means a complete loss of coverage. In addition, the Plan Administrator in its sole discretion and on a uniform and consistent basis, may treat the following as a Loss of Coverage:

  - A substantial decrease in the health care providers available under the Benefit Package Plan;

  - A reduction in benefits for a specific type of medical condition or treatment with respect to which the Participant or his or her Spouse or Dependent is currently in a course of treatment; or

  - Any other similar fundamental loss of coverage.

- **Addition or Significant Improvement of a Benefit Option.** If during a Period of Coverage, the Plan adds a new Benefit Option or significantly improves an existing Benefit Option, the Plan Administrator may permit the following election changes:

  - Participants who are enrolled in a Benefit Option other than the newly-added or significantly improved Benefit Option that provides similar coverage may change their election on a prospective basis to cancel the current Benefit Option and instead elect the newly added or significantly improved Benefit Option; and

  - Employees who are otherwise eligible may elect the newly added or significantly improved Benefit Option on a prospective basis, subject to the terms and limitations of the Benefit Option. The Plan Administrator, in its sole discretion and on a uniform and consistent basis, will decide whether there has been an addition of, or a significant improvement in, a Benefit Option.

- **Loss of Coverage Under Another Group Health Coverage.** A Participant may prospectively change an election to add group health coverage for the Participant, Spouse or Dependent, if such individual(s) loses coverage under any group health coverage sponsored by a governmental or educational institution, including, but not limited to, the following:

  - A children's health insurance program (CHIP) under Title XXI of the Social Security Act;

  - A health care program of an Indian Tribal government (as defined in Code §7701(a)(40)), the Indian Health Service, or a tribal organization;

  - A state health benefits risk pool; or

  - A foreign government group health plan, subject to the terms and limitations of the applicable Benefit Option.

- **Change in Coverage Under Another Employer Plan.** A Participant may make a prospective election change that is on account of and corresponds with a change made under an employer plan, including a plan of the Employer or a plan of the Spouse's or Dependent's employer, so long as:

  - The other cafeteria plan or qualified benefits plan permits its participants to make an election change that would be permitted under applicable IRS regulations; or

  - The Plan permits Participants to make an election for a Period of Coverage that is different from the plan year under the other cafeteria plan or qualified benefits plan.

  The Plan Administrator, on a uniform and consistent basis, will decide whether a requested change is because of, and corresponds with, a change made under the other employer plan.

- **Change in Dependent Care Service Provider.** A Participant may make a prospective election change that corresponds with a change in the dependent care service provider. For example:

  - If the Participant terminates one dependent care service provider and hires a new dependent care service provider, the Participant may change coverage to reflect the cost of the new service provider; and

  - If the Participant terminates a dependent care service provider because a relative or other person becomes available to take care of the child at no charge, the Participant may cancel coverage.

  A Participant entitled to change an election as described in this Section must do so in accordance with the procedures described this Section.

6.5 **Election Modifications for HSA Contribution Benefits May be Changed Prospectively At Any Time**

As set forth in Schedule C, an election to make a Contribution to an **HSA Contribution Benefit** can be increased, decreased or revoked at any time on a prospective basis. Such election changes shall be effective no later than the 1st day of the next calendar month following the date that the election change was filed. No other Benefit Option election changes can occur as a result of a change in an **HSA Contribution Benefit** election except as otherwise permitted in this Section.

A Participant entitled to change an election as described in this Section must do so in accordance with the procedures described above.

6.6 **Election Modifications Required by Plan Administrator**

The Plan Administrator may require, at any time, any Participant or class of Participants to amend their Salary Reductions for a Period of Coverage if the Plan Administrator determines that such action is necessary or advisable in order to:

- Satisfy any of the Code's nondiscrimination requirements applicable to this Plan or another cafeteria plan;

- Prevent any Employee or class of Employees from having to recognize more income for federal income tax purposes from the receipt of Benefits hereunder than would otherwise be recognized;

- Maintain the qualified status of Benefits received under this Plan; or

- Satisfy any of the Code's nondiscrimination requirements or other limitations applicable to the Employer's qualified Plans.

In the event that Contributions need to be reduced for a class of Participants, the Plan Administrator will reduce the Salary Reduction amounts for each affected Participant, beginning with the Participant in the class who had elected the highest Salary Reduction amount, and continuing with the Participant in the class who had elected the next-highest Salary Reduction amount, and so forth, until the defect is corrected.

Section 7
Claims and Appeals

7.1 Claims Under the Plan

If a claim for reimbursement under the **Health FSA, Limited Scope Health FSA,** or **DCAP** is wholly or partially denied, or if the Participant is denied a Benefit under the Plan regarding the Participant's coverage under the Plan, then the claims procedure described below will apply.

7.2 Notice from ASI

If a claim is denied in whole or in part, ASI will notify the Participant in writing within 30 days of the date that ASI received the claim. This time may be extended for an additional 15 days for matters beyond the control of ASI, including cases where a claim is incomplete. ASI will provide written notice of any extension, including the reason(s) for the extension and the date a decision by ASI is expected to be made. When a claim is incomplete, the extension notice will also specifically describe the required information, and will allow the Participant at least 45 days from receipt of the notice to provide the specified information, and will have the effect of suspending the time for a decision on the claim until the specified information is provided. Notification of a denied claim will include:

- The specific reasons for the denial;
- The specific Plan provisions on which the denial is based;
- A description of any additional material or information necessary to validate the claim and an explanation of why such material or information is necessary; and
- Appropriate information on the steps to take to appeal ASI's adverse benefits determination, including the right to submit written comments and have them considered, and the right to review, upon request and at no charge, relevant documents and other information, and the right to file suit, where applicable, with respect to any adverse benefits determination after the final appeal of the claim.

7.3 First Level Appeal to ASI

If a claim is denied in whole or in part, the Participant, or the Participant's authorized representative, may request a review of the adverse benefits determination upon written application to ASI. The Participant, or the Participant's authorized representative, may request access to all relevant documents in order to evaluate whether to request review of an adverse benefits determination and, if review is requested, to prepare for such review.

An appeal of an adverse benefits determination must be made in writing within 90 days upon receipt of the notice that the claim was denied. If an appeal is not made within the above referenced timeframe all rights to appeal the adverse benefits determination and to file suit in court will be forfeited unless otherwise protected by law. A written appeal should include: additional documents, written comments, and any other information in support of the appeal. The review of the adverse benefits determination will take into account all new information, whether or not presented or available at the initial determination. No deference will be afforded to the initial determination.

7.4 ASI Action on Appeal

ASI, within a reasonable time, but no later than 60 days after receipt of the request for review, will decide the appeal. ASI may, in its discretion, hold a hearing on the denied claim. Any medical expert consulted in connection with the appeal will be different from and not subordinate to any expert consulted in connection with the initial claim denial. The identity of any medical expert consulted in connection with the appeal will be provided. If the decision on review affirms the initial denial of the claim, a notice will be provided which sets forth:

- The specific reasons for the decision on review;
- The specific Plan provisions on which the decision is based;
- A statement regarding the right to review, upon request and at no charge, relevant documents and other information. If an internal rule, guideline, protocol, or other similar criterion is relied on in making the decision on review, a description of the specific rule, guideline, protocol, or other similar criterion or a statement that such a rule, guideline, protocol, or other similar criterion was relied on and that a copy of such rule, guideline, protocol, or other criterion will be provided free of charge upon request; and
- Appropriate information on the steps to take to appeal ASI's adverse benefits determination, including the right to submit written comments and have them considered, and the right to review, upon request and at no charge, relevant documents and other information, and the right to file suit, where applicable, with respect to any adverse benefits determination after the final appeal of the claim.

7.5 Second and Final Level Appeal to the Plan Administrator

If the decision on review affirms ASI's initial denial, the Participant may request a review of the adverse appeal determination upon written application to the Plan Administrator.

The Participant, or the Participant's authorized representative, may request access to all relevant documents in order to evaluate whether to request review of an adverse benefits determination and, if review is requested, to prepare for such review.

An appeal of an adverse appeal determination must be made in writing within 30 days after receipt of the notice that the first level appeal was denied. If an appeal is not made within the above referenced timeframe all rights to appeal the adverse benefits determination and to file suit in court will be forfeited unless otherwise protected by law. A written appeal should include: additional documents, written comments, and any other information in support of the appeal. The review of the adverse benefits determination will take into account all new information, whether or not presented or available at the initial determination. No deference will be afforded to the prior determination.

7.6 Plan Administrator Action on Appeal

The Plan Administrator, within a reasonable time, but no later than 60 days after receipt of the request for review, will decide the appeal. The Plan Administrator may, in its discretion, hold a hearing on the denied claim. Any medical expert consulted in connection with the appeal will be different from and not subordinate to any expert consulted in connection with the prior claim denial. The identity of any

medical expert consulted in connection with the appeal will be provided. If the decision on review affirms the initial denial of the claim, a notice will be provided which sets forth:

- The specific reason(s) for the decision on review;
- The specific Plan provision(s) on which the decision is based;
- A statement regarding the right to review, upon request and at no charge, relevant documents and other information. If an internal rule, guideline, protocol, or other similar criterion is relied on in making the decision on review, a description of the specific rule, guideline, protocol, or other similar criterion or a statement that such a rule, guideline, protocol, or other similar criterion was relied on and that a copy of such rule, guideline, protocol, or other criterion will be provided free of charge upon request.

7.7 **Appeal Procedure for Eligibility or Salary Reduction Issues**

If the Participant is denied a Benefit under the Plan due to questions regarding the Participant's eligibility or entitlement for coverage under the Plan or regarding the amount the Participant owes, the Participant may request a review upon written application to the Plan Administrator.

The Participant, or the Participant's authorized representative, may request access to all relevant documents in order to evaluate whether to request review of an adverse benefits determination and if review is requested, to prepare for such review.

An appeal of an adverse benefits determination must be made in writing within 180 days upon receipt of the notice that the claim was denied. If an appeal is not made within the above referenced timeframe all rights to appeal the adverse benefits determination and to file suit in court will be forfeited unless otherwise protected by law. A written appeal should include: additional documents, written comments, and any other information in support of the appeal. The review of the adverse benefits determination will take into account all new information, whether or not presented or available at the initial determination. No deference will be afforded to the initial determination.

The Plan Administrator, within a reasonable time, but no later than 30 days after receipt of the request for review, will decide the appeal. The Plan Administrator may, in its discretion, hold a hearing on the denied claim. Any medical expert consulted in connection with the appeal will be different from and not subordinate to any expert consulted in connection with the initial claim denial. The identity of any medical expert consulted in connection with the appeal will be provided. If the decision on review affirms the initial denial of the claim, a notice will be provided which sets forth:

- The specific reasons for the decision on review;
- The specific Plan provisions on which the decision is based;
- A statement regarding the right to review, upon request and at no charge, relevant documents and other information. If an "internal rule, guideline, protocol, or other similar criterion" is relied on in making the decision on review, a description of the specific rule, guideline, protocol, or other similar criterion or a statement that such a rule, guideline, protocol, or other similar criterion was relied on and that a copy of such rule, guideline, protocol, or other criterion will be provided free of charge upon request; and

- Appropriate information on the steps to take to appeal the Plan Adminstrator's adverse benefits determination, including the right to submit written comments and have them considered, and the right to review, upon request and at no charge, relevant documents and other information, and the right to file suit, where applicable, with respect to any adverse benefits determination after the final appeal of the claim.

If the decision on review affirms the Plan Administrator's denial, the Participant may request a review of the adverse appeal determination upon written application to the Plan Administrator. The Second and Final Level of Appeals Procedures described above will apply.

Section 8
Plan Administration

8.1 Plan Administrator

The administration of this Plan shall be under the supervision of the Plan Administrator. It is the principal duty of the Plan Administrator to see that this Plan is carried out in accordance with the terms of the Plan document and for the exclusive benefit of persons entitled to participate in this Plan and without discrimination among them.

8.2 Powers of the Plan Administrator

The Plan Administrator shall have such powers and duties as may be necessary or appropriate to discharge its functions hereunder. The Plan Administrator shall have final discretionary authority to make such decisions and all such determinations shall be final, conclusive and binding. The Plan Administrator shall have the exclusive right to interpret the Plan and to decide all matters hereunder. The Plan Administrator shall have the following discretionary authority:

- To construe and interpret this Plan, including all possible ambiguities, inconsistencies and omissions in the Plan and related documents, and to decide all questions of fact, questions relating to eligibility and participation, and questions of Benefits under this Plan (provided that the Plan Administrator shall exercise such exclusive power with respect to an appeal of a claim);

- To prescribe procedures to be followed and the forms to be used by Employees and Participants to make elections pursuant to this Plan;

- To prepare and distribute information explaining this Plan and the Benefits under this Plan in such manner as the Plan Administrator determines to be appropriate;

- To request and receive from all Employees and Participants such information as the Plan Administrator shall from time to time determine to be necessary for the proper administration of this Plan;

- To furnish each Employee and Participant with such reports in relation to the administration of this Plan as the Plan Administrator determines to be reasonable and appropriate, including appropriate statements setting forth the amounts by which a Participant's Compensation has been reduced in order to provide Benefits under this Plan;

- To receive, review and keep on file such reports and information concerning the Benefits covered by this Plan as the Plan Administrator determines from time to time to be necessary and proper;

- To appoint and employ such individuals or entities to assist in the administration of this Plan as it determines to be necessary or advisable, including legal counsel and Benefit consultants;

- To sign documents for the purposes of administering this Plan, or to designate an individual or individuals to sign documents for the purposes of administering this Plan;

- To secure independent medical or other advice and require such evidence as deemed necessary to decide any claim or appeal; and

- To maintain the books of accounts, records, and other data in the manner necessary for proper administration of this Plan and to meet any applicable disclosure and reporting requirements.

8.3 **Reliance on Participant, Tables, etc.**

The Plan Administrator may rely upon the Participant's direction, information or election as being proper under the Plan and shall not be responsible for any act or failure to act because of a direction or lack of direction by the Participant. The Plan Administrator will also be entitled, to the extent permitted by law, to rely conclusively on all tables, valuations, certificates, opinions and reports that are furnished by accountants, attorneys, or other experts employed or engaged by the Plan Administrator.

8.4 **Outside Assistance**

The Plan Administrator may employ such counsel, accountants, claims administrators, consultants, actuaries and other person or persons as the Plan Administrator shall deem advisable. The Plan shall pay the compensation of such counsel, accountants, and other person or persons and any other reasonable expenses incurred by the Plan Administrator in the administration of the Plan. Unless otherwise provided in the service agreement, obligations under this Plan shall remain the obligations of the Employer and the Plan Administrator.

8.5 **Insurance Contracts**

The Employer and/or some of the related employers adopting this Plan may have the right to enter into a contract with one or more insurance companies or self-fund for the purposes of providing any Benefits under the Plan; and to replace any of such insurance companies, contracts, or benefits. Any dividends, retroactive rate adjustments or other refunds of any type that may become payable under any such insurance contract shall not be assets of the Plan but shall be the property of, and be retained by, the Employer, to the extent that such amounts are less than aggregate Employer Contributions toward such insurance.

8.6 **Fiduciary Liability**

To the extent permitted by law, the Plan Administrator shall not incur any liability for any acts or for failure to act.

8.7 **Inability to Locate Payee**

If the Plan Administrator is unable to make payment to the Participant or another person to whom a payment is due under the Plan because it cannot ascertain the identity or whereabouts of the Participant or such other person after reasonable efforts have been made to identify or locate such person, then such payment and all subsequent payments otherwise due to the Participant or such other person shall be forfeited one year after the date any such payment first became due.

8.8 **Effect of Mistake**

In the event of a mistake as to the eligibility or participation of an Employee, or the allocations made to the Participant's account, or the amount of Benefits paid or to be paid to the Participant or another person, the Plan Administrator shall, to the extent administratively possible and otherwise permissible under Code §125 or the regulations issued thereunder, correct by making the appropriate adjustments of such amounts as necessary to credit the Participant's account or such other person's account or withhold any amount due to the Plan or the Employer from Compensation paid by the Employer.

Section 9
Amendment or Termination of the Plan

9.1 Permanency

While the Employer fully expects that this Plan will continue indefinitely, due to unforeseen, future business contingencies, permanency of the Plan will be subject to the Employer's right to amend or terminate the Plan, as provided in the paragraphs below.

9.2 Right to Amend

The Employer reserves the right to merge or consolidate the Plan and to make any amendment or restatement to the Plan from time-to-time, including those which are retroactive in effect. Such amendments may be applicable to any Participant.

Any amendment or restatement shall be deemed to be duly executed when properly promulgated under the requirements of Chapter 536.

9.3 Right to Terminate

The Plan Administrator reserves the right to discontinue or terminate the Plan in whole or in part at any time without prejudice. A related employer has the right to discontinue participating in the Plan at the end of each calendar year.

Section 10 General Provisions

10.1 No Contract of Employment

Nothing contained in the Plan shall be construed as a contract of employment with the Employer or as a right of any Employee to be continued in the employment of the Employer, or as a limitation of the right of the Employer to discharge any Employee, with or without cause.

10.2 Compliance with Federal Mandates

To the extent applicable for each Benefit Option, the Plan will provide Benefits in accordance with the requirements of all federal mandates, including USERRA, COBRA, and HIPAA. This Plan shall be construed, operated and administered accordingly, and in the event of any conflict between any part, clause or provision of this Plan and the Code, the provisions of the Code shall be deemed controlling, and any conflicting part, clause or provision of this Plan shall be deemed superseded to the extent of the conflict.

10.3 Verification

The Plan Administrator shall be entitled to require reasonable information to verify any claim or the status of any person as an Employee or Dependent. If the Participant does not supply the requested information within the applicable time limits or provide a release for such information, the Participant will not be entitled to Benefits under the Plan.

10.4 Limitation of Rights

Nothing appearing in or done pursuant to the Plan shall be held or construed:

- To give any person any legal or equitable right against the Employer, any of its employees, or persons connected therewith, except as provided by law; or
- To give any person any legal or equitable right to any assets of the Plan or any related trust, except as expressly provide herein or as provided by law.

10.5 Non-Assignability of Rights

The right of any Participant to receive any reimbursement under this Plan shall not be alienable by the participant by assignment or any other method and shall not be subject to claims by the Participant's creditors by any process whatsoever. Any attempt to cause such right to be so subjected will not be recognized, except to the extent required by law.

10.6 Governing Law

This Plan is intended to be construed, and all rights and duties hereunder are governed, in accordance with the laws of the State of Missouri, except to the extent such laws are preempted by any federal law.

10.7 **Severability**

If any provision of the Plan is held invalid or unenforceable, its validity or unenforceability shall not affect any other provision of the Plan, and the Plan shall be construed and enforced as if such provision had not been included herein.

10.8 **Captions**

The captions contained herein are inserted only as a matter of convenience and for reference and in no way define, limit, enlarge or describe the scope or intent of the Plan nor in any way shall affect the Plan or the construction of any provision thereof.

10.9 **Federal Tax Disclaimer**

To ensure compliance with requirements imposed by the IRS to the extent this Plan Document or any Schedule contains advice relating to a federal tax issue, it is not intended or written to be used, and it may not be used, for the purpose of avoiding any penalties that may be imposed on the Participant or any other person or entity under the Internal Revenue Code or promoting, marketing or recommending to another party any transaction or matter addressed herein.

10.10 **No Guarantee of Tax Consequences**

Neither the Plan Administrator nor the Employer make any commitment or guarantee that any amounts paid to the Participant or for the Participant's benefit under this Plan will be excludable from the Participant's gross income for federal, state or local income tax purposes. It shall be the Participant's obligation to determine whether each payment under this Plan is excludable from the Participant's gross income for federal, state and local income tax purposes, and to notify the Plan Administrator if the Participant has any reason to believe that such payment is not so excludable.

10.11 **Indemnification of Employer**

If the Participant receives one or more payments or reimbursements under this Plan on a pre-tax Salary Reduction basis, and such payments do not qualify for such treatment under the Code, the Participant shall indemnify and reimburse the Employer for any liability the Employer may incur for failure to withhold federal income taxes, Social Security taxes, or other taxes from such payments or reimbursements.

Section 11 HIPAA Privacy and Security

11.1 Provision of Protected Health Information to Employer

For purposes of this Section, Protected Health Information (PHI) shall have the meaning as defined in HIPAA. PHI means information that is created or received by the Plan and relates to the past, present, or future physical or mental health or condition of a Participant; the provision of health care to a Participant; or the past, present, or future payment for the provision of health care to a Participant; and that identifies the Participant or for which there is a reasonable basis to believe the information can be used to identify the Participant. PHI includes information of persons living or deceased.

Members of the Employer's workforce have access to the individually identifiable health information of Plan Participants for administrative functions of the **Health FSA** and the **Limited Scope Health FSA**, plus any other Benefit Option which might be subject to the privacy and security provisions of HIPAA (hereinafter referred to collectively as the Plan). When this health information is provided to the Employer, it is PHI. HIPAA and its implementing regulations restrict the Employer's ability to use and disclose PHI. The Employer shall have access to PHI from the Plan only as permitted under this Section or as otherwise required or permitted by HIPAA.

11.2 Permitted Disclosure of Enrollment/Disenrollment Information

The Plan Administrator or ASI may disclose to the Employer information on whether the individual is participating in the Plan.

11.3 Permitted Uses and Disclosure of Summary Health Information

The Plan may disclose Summary Health Information to the Employer, provided that the Employer requests the Summary Health Information for the purpose of modifying, amending, or terminating the Plan.

Summary Health Information means information:

- That summarizes the claims history, claims expenses, or type of claims experienced by individuals for whom a plan sponsor had provided health benefits under a health plan; and
- From which the required information has been deleted, except that the geographic information need only be aggregated to the level of a five-digit ZIP code.

11.4 Permitted and Required Uses and Disclosure of PHI for Plan Administration Purposes

Unless otherwise permitted by law, and subject to the conditions of disclosure and obtaining written certification described below, the Plan may disclose PHI to the Employer, provided that the Employer uses or discloses such PHI only for Plan Administration Purposes.

Plan Administration Purposes means administration functions performed by the Employer on behalf of the Plan, such as quality assurance, claims processing, auditing, and monitoring. Plan Administration functions do not include functions performed by the Employer in connection with any other benefit or benefit plan of the Employer, and they do not include any employment-related functions.

Notwithstanding the provisions of this Plan to the contrary, in no event shall the Employer be permitted to use or disclose PHI in a manner that is inconsistent with 45 CFR § 164.504(f).

11.5 **Conditions of Disclosure for Plan Administration Purposes**

Employer agrees that with respect to any PHI (other than enrollment/disenrollment information and Summary Health Information, which are not subject to these restrictions) disclosed to it, the Employer shall:

- Not use or further disclose PHI other than as permitted or required by the Plan or as required by law;
- Ensure that any agent, including a subcontractor, to whom it provides PHI received from the Plan agrees to the same restrictions and conditions that apply to the Employer with respect to PHI;
- Not use or disclose the PHI for employment-related actions and decisions;
- Report to the Plan any use or disclosure of the information that is inconsistent with the uses or disclosures provided for of which it becomes aware;
- Make available PHI to comply with HIPAA's right to access in accordance with 45 CFR §164.524;
- Make available PHI for amendment and incorporate any amendments to PHI in accordance with 45 CFR §164.526;
- Make available the information required to provide an accounting of disclosures in accordance with 45 CFR §164.528;
- Make its internal practices, books, and records relating to the use and disclosure of PHI received from the Plan available to the Secretary of Health and Human Services for purposes of determining compliance with HIPAA's privacy and security requirements;
- If feasible, return or destroy all PHI received from the Plan that the Employer still maintains in any form and retain no copies of such information when no longer needed for the purpose for which disclosure was made, except that, if such return or destruction is not feasible, limit further uses and disclosures to those purposes that make the return or destruction of the information infeasible; and
- Ensure that the adequate separation between the Plan and the Employer (i.e., the "firewall"), required in 45 CFR §504(f)(2)(iii), is satisfied.

The Employer further agrees that if it creates, receives, maintains, or transmits any electronic PHI (other than enrollment/disenrollment information and Summary Health Information, which are not subject to these restrictions) on behalf of the Plan, it will implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the electronic PHI, and it will ensure that any agents, including subcontractors, to whom it provides such

electronic PHI agrees to implement reasonable and appropriate security measures to protect the information. The Employer will report to the Plan any security incident of which it becomes aware.

11.6 **Adequate Separation Between Plan and Employer**

The Employer shall designate such employees of the Employer who need access to PHI in order to perform Plan administration functions that the Employer performs for the Plan such as quality assurance, auditing, monitoring, payroll, and appeals. No other persons shall have access to PHI. These specified employees, or classes of employees, shall only have access to and use of PHI to the extent necessary to perform the plan administration functions that the Employer performs for the Plan.

In the event that any of these designated employees do not comply with the provisions of this Section, that employee shall be subject to disciplinary action by the Employer for non-compliance pursuant to the Employer's employee discipline and termination procedures.

The Employer will ensure that the provisions of this Section are supported by reasonable and appropriate security measures to the extent that the designees have access to electronic PHI.

11.7 **Certification of Plan Sponsor**

The Plan shall disclose PHI to the Employer only upon the receipt of a certification by the Employer that the Plan has been amended to incorporate the provisions of 45 CFR §164.504(f)(2)(ii), and that the Employer agrees to the conditions of disclosure set forth under the section entitled *Conditions of Disclosure for Plan Administration Purposes.*

11.8 **Organized Health Care Arrangement**

The Plan Administrator intends the Plan to form part of an Organized Health Care Arrangement along with any other Benefit Option under a covered health plan under 45 CFR §160.103 provided by Employer.

IN WITNESS WHEREOF, and as conclusive evidence of the adoption of the foregoing instrument comprising the State of Missouri Cafeteria Plan, State of Missouri has caused this Plan to be executed in its name and on its behalf, on this ____ day of _____, 20___.

State of Missouri

By:_____

Its:_____

Attest:_____

Its:_____

Glossary

Capitalized terms used in the Plan have the following meanings:

Account means the account(s) maintained under this Cafeteria Plan by the Plan Administrator to which allocations of employer contributions are made for each participant as required by this Cafeteria Plan and from which payments, as permitted by this Cafeteria Plan, shall be paid.

Benefit or Benefits means the Benefit Options offered under the Plan.

Benefit Option means a qualified benefit under Code §125(f) that is offered under this Cafeteria Plan, or an option for coverage under an underlying accident or health plan.

Cafeteria Plan means the State of Missouri Cafeteria Plan as set forth herein and as amended from time to time.

Claims Administrator means Application Software, Inc., dba ASI, dba ASIFlex.

COBRA means the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended.

Code means the Internal Revenue Code of 1986, as amended.

Compensation means the wages or salary paid to an Employee by the Employer, determined prior to: any Salary Reduction election under this Plan; any Salary Reduction election under any other cafeteria plan; any compensation reduction under any Code §132(f)(4) plan; and any salary deferral elections under any Code §§401(k), 408(k) or 457(b) Plan or arrangement.

Contribution means the amount contributed to pay for the cost of Benefits as calculated under the Benefit Options.

DCAP means Dependent Care Assistance Program.

Dental and Vision Expenses has the meaning defined in the **Limited Scope Health FSA** Schedule below.**Dependent** means any individual who is a tax dependent of the Participant as defined in Code §§105(b) and 152, with the following exceptions:

- For purposes of accident or health coverage (to the extent funded under the **PPP**, and for purposes of the **Health FSA**:
    - A dependent is defined as in Code §§105(b) and 152, determined without regard to §152 subsections (b)(1), (b)(2), and (d)(1)(B) thereof; and
    - Any child whom IRS Rev. Proc. 2008-48 applies (regarding certain children of divorced or separated parents who receive more than half of their support for the calendar year from one or both parents and are in the custody of one or both parents for more than half of the calendar year) is treated as a dependent of both parents; and
- For purposes of the **DCAP**, a dependent means a Qualifying Individual.

Notwithstanding the foregoing, the **Health FSA** Component will provide Benefits in accordance with the applicable requirements of any QMCSO, even if the child does not meet the definition of "Dependent."

Dependent Care Assistance Program means the dependent care assistance program component established by Employer under the Plan. It allows the Participant to use pre-tax dollars to pay for the care of the Participant's eligible Dependents while the Participant is at work.

Dependent Care Expenses has the meaning described in the **DCAP** Schedule below.

Earned Income means all income derived from wages, salaries, tips, self-employment, and other compensation (such as disability or wage continuation Benefits), but only if such amounts are includible in gross income for the taxable year. Earned income does not include: any amounts received pursuant to any **DCAP** established under Code §129; or any other amounts excluded from earned income under Code §32(c)(2), such as amounts received under a pension or annuity, or pursuant to workers' compensation.

Effective Date of this Plan shall be January 1, 2013.

Employee means any person employed by the employer.

The following classes of employees cannot participate in the State of Missouri Cafeteria Plan:

- Leased employees (as defined by §414 (n) of the Code);
- Contract workers and independent contractors; and
- Individuals paid by a temporary or other employment or staffing agency.

Employer means State of Missouri including any agency, or department of the State of Missouri other than the University of Missouri and Southeast Missouri State University.

ERISA means the Employee Retirement Income Security Act of 1974, as amended.

FMLA means the Family and Medical Leave Act of 1993, as amended.

Grace Period means a period of time as specified by the Employer in which qualified Medical Care Expenses and/or Dependent Care Expenses incurred during the period may be paid or reimbursed from benefits or contributions remaining unused at the end of the immediately preceding Plan year from each respective account. Such Grace Period shall not extend beyond the fifteenth day of the third calendar month after the end of the immediately preceding Plan Year to which the Grace Period relates. Any Grace Period shall not take effect until the 2013 Plan Year. Funds set aside for the 2012 Plan Year can only be used to reimburse expenses incurred between January 1, 2012 and December 31, 2012.

HDHP means High Deductible Health Plan.

Health Care Expenses has the meaning defined in the **Health FSA** Schedule below.

Health Flexible Spending Account means the health flexible spending account component established by the Employer under the Plan. It allows a Participant to use pre-tax dollars to pay for most health and dental expenses not reimbursed under other programs.

Health FSA means Health Flexible Spending Account.

Health Plan means the health benefit plan sponsored by the Employer.

Health Savings Account means the savings account Benefit Option established by the Employer's designee under this Plan.

High Deductible Health Plan means the high deductible health plan offered by the Employer that is intended to qualify as a high deductible health plan under Code §223(c)(2), as described in materials provided separately by the Employer.

HIPAA means the Health Insurance Portability and Accountability Act of 1996, as amended.

HSA means a Health Savings Account established under Code §223. Such arrangements are individual trusts or custodial accounts, each separately established and maintained by an Employee with a qualified trustee/custodian.

HSA Contribution Benefit means the election to allow an Employee to receive HSA Contributions on a pre-tax, Salary Reduction basis and such Employer Contributions are excludable from the HSA Employee's income.

HSA Employee means an Employee covered under a qualifying High Deductible Health Plan (HDHP) (as defined by IRC §223). In order to receive Employer **HSA Contribution Benefit**, the Employee must certify that he or she: cannot be claimed as another person's tax dependent; is not entitled to Medicare Benefits, and does not have any health coverage other than HDHP coverage.

Limited Scope Health Flexible Spending Account means the limited scope health flexible spending account component established by the Employer under the Plan. It allows a Participant to use pre-tax dollars to pay for dental and vision expenses not reimbursed under other programs.

Limited Scope Health FSA means Limited Scope Health Flexible Spending Account.

Office of Administration means the Office of Administration of the State of Missouri.

Open Enrollment Period with respect to a Plan Year means a period as described by the Plan Administrator preceding the Plan Year during which Participants may make Benefit elections for the Plan Year.

Participant means a person who is an Employee and who is participating in this Plan in accordance with the provisions of the Eligibility and Participation Section. Participants include: (a) those that elect to receive Benefits under this Plan, and enroll for Salary Reductions to pay for such Benefits; and (b) those that elect instead to receive their full salary in cash and have not elected the **Health FSA** or **DCAP**.

Period of Coverage means the Plan Year, with the following exceptions: for Employees who first become eligible to participate, it shall mean the portion of the Plan Year following the date participation

commences, as described in the Eligibility and Participation Section; and for Employees who terminate participation, it shall mean the portion of the Plan Year prior to the date participation terminates, as described in the Eligibility and Participation Section.

PHI means Protected Health Information.

Plan means the State of Missouri Cafeteria Plan, as set forth herein and as amended from time to time.

Plan Administrator means the Office of Administration of its duly appointed designee to administer this Cafeteria Plan.

Plan Year means the twelve-month period ending December 31.

PPP means the Premium Payment Plan.

Premium Payment Plan means the Benefit Option in which an Employee can elect to participate and have Contributions for the Health Plan paid on a pre-tax basis.

Protected Health Information (PHI) means information that is created or received by State of Missouri Cafeteria Plan and relates to the past, present, or future physical, mental health or condition of a Participant; the provision of health care to a participant; or the past, present, or future payment for the provision of health care to a Participant; and that identifies the Participant or for which there is a reasonable basis to believe the information can be used to identify the Participant. Protected health information includes information of persons living or deceased.

QMCSO means a Qualified Medical Child Support Order, as defined in ERISA §609(a).

Qualifying Dependent Care Services has the meaning described in the **DCAP** Schedule below.

Qualifying Individual means:

- A tax dependent of the Participant as defined in Code §152 who is under the age of 13 and who is the Participant's qualifying child as defined in Code § 152(a)(1);

- A tax dependent of the Participant as defined in Code §152, but determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof, who is physically or mentally incapable of self-care and who has the same principal place of abode as the Participant for more than half of the year; or

- A Participant's Spouse who is physically or mentally incapable of self-care, and who has the same principal place of abode as the Participant for more than half of the year.

Notwithstanding the foregoing, in the case of divorced or separated parents, a Qualifying Individual who is a child shall, as provided in Code §21(e)(5), be treated as a Qualifying Individual of the custodial parent (within the meaning of Code §152(e)) and shall not be treated as a Qualifying Individual with respect to the non-custodial parent.

Related Employer means any employer affiliated with State of Missouri that, under Code §414(b), (c), or (m), is treated as a single employer with State of Missouri for purposes of Code §125(g)(4), and which is listed in Appendix B.

Salary Reduction means the amount by which the Participant's Compensation is reduced and applied by the Employer under this Plan to pay for one or more of the Benefit Options.

Salary Reduction Agreement means the agreement, form(s) or Internet web site, which Employees use to elect one or more Benefit Options. The agreement, forms and/or internet web site spell out the procedures used for allowing an Employee to participate in this Plan and will allow the Employee to elect Salary Reductions to pay for any Benefit Options offered under this Plan.

Spouse means an individual who is legally married to a Participant as determined under applicable state law (and who is treated as a Spouse under the Code). Notwithstanding the above, for purposes of the **DCAP**, the term "Spouse" shall not include: an individual legally separated from the Participant under a divorce or separate maintenance decree; or an individual who, although married to the Participant, files a separate federal income tax return, maintains a principal residence separate from the Participant during the last six months of the taxable year, and does not furnish more than half of the cost of maintaining the principal place of abode of the Participant.

Student means an individual who, during five or more calendar months during the Plan Year, is a full-time student at any educational organization that normally maintains a regular faculty and curriculum and normally has an enrolled student body in attendance at the location where its educational activities are regularly held.

USERRA means the Uniformed Services Employment and Reemployment Rights Act of 1994, as amended.

Waive coverage means to formally opt-out of participation in the **PPP** in writing or online.

Appendix A
Exclusions—Medical Expenses That Are Not Reimbursable From the Health FSA and the Limited Scope Health FSA

The Plan Document contains the general rules governing what expenses are reimbursable under the **Health FSA** and the **Limited Scope Health FSA**. This Appendix A, as referenced in the Plan Document, specifies certain expenses that are excluded under this Plan with respect to reimbursement from the **Health FSA** and the **Limited Scope Health FSA** -- that is, expenses that are *not* reimbursable, even if such expenses meet the definition of "medical care" under Code §§213(d) and 106(f) and may otherwise be reimbursable under the regulations governing health flexible spending accounts:

- Health insurance premiums for any other plan (including a plan sponsored by the Employer).
- Long-term care services.
- Cosmetic surgery or other similar procedures, unless the surgery or procedure is necessary to ameliorate a deformity arising from, or directly related to, a congenital abnormality, a personal injury resulting from an accident or trauma, or a disfiguring disease. "Cosmetic surgery" means any procedure that is directed at improving the patient's appearance and does not meaningfully promote the proper function of the body or prevent or treat illness or disease.
- The salary expense of a nurse to care for a healthy newborn at home.
- Funeral and burial expenses.
- Household and domestic help (even if recommended by a qualified physician due to an Employee's or Dependent's inability to perform physical housework).
- Custodial care.
- Costs for sending a problem child to a special school for Benefits that the child may receive from the course of study and disciplinary methods.
- Social activities, such as dance lessons (even if recommended by a physician for general health improvement).
- Bottled water.
- Cosmetics, toiletries, toothpaste, etc.
- Uniforms or special clothing, such as maternity clothing.
- Automobile insurance premiums.
- Over-the-counter medications and drugs, excluding insulin, without proof of a valid prescription.
- Marijuana and other controlled substances that are in violation of federal laws, even if prescribed by a physician.

- Any item that does not constitute "medical care" as defined under Code §§213(d) and 106(f).
- Any item that is not reimbursable under Code §§213(d) and 106(f) due to the rules in Prop. Treas. Reg. §1.125-2, Q-7(b)(4) or other applicable regulations.

Appendix B
Related Employers That Have Adopted This Plan

With the Approval of State of Missouri.

The following Related Employers have adopted this plan:

- The Office of Administration
- The Department of Agriculture
- The Department of Conservation
- The Department of Corrections
- The Department of Economic Development
- The Department of Elementary and Secondary Education
- The Department of Health and Senior Services
- The Department of Higher Education
- The Department of Insurance, Financial Institutions and Professional Registration
- The Department of Labor and Industrial Relations
- The Department of Mental Health
- The Department of Natural Resources
- The Department of Public Safety
- The Department of Revenue
- The Department of Social Services
- The Department of Transportation
- The Office of the Attorney General
- The Office of the Governor
- The Office of the Lieutenant Governor
- The Office of the State Auditor
- The Office of the Secretary of State
- The Office of the Treasurer
- The Missouri House of Representatives
- The Missouri Senate
- The Missouri Consolidated Health Care Plan
- The Missouri State Employees' Retirement System
- The Supreme Court
- Harris-Stowe State University Board of Regents
- Lincoln University Board of Curators
- Missouri State University
- Northwest Missouri State University Board of Regents
- Truman State University Board of Governors
- University of Central Missouri Board of Governors

Employer means State of Missouri including any agency, or department of the State of Missouri other than the University of Missouri, Southeast Missouri State University, and Missouri Southern State University.

Schedule A
Premium Payment Plan

Unless otherwise specified, terms capitalized in this Schedule A shall have the same meaning as the defined terms in the Plan Document to which this Schedule is attached.

A.1 Benefits

If the Employee is an enrolled participant in the Health Plan and timely submits an executed Salary Reduction Agreement, the Employee can either:

- Option A: Elect Benefits under the **PPP** by electing to contribute his or her share for the Health Plan on a pre-tax basis; or

- Option B: Elect no Benefits under the **PPP** and to contribute his or her share, if any, for the Health Plan with after-tax deductions outside of this Plan.

If the Employee is an enrolled participant in the Health Plan and/or deduction plans of the Voluntary Payroll Vendors and does not timely submit an executed Salary Reduction Agreement, the Employee will be deemed to have elected Option A.

Benefits elected under Option A will be funded by the Participant's Contributions as provided in the Eligibility and Participation section in the Plan Document.

To determine when a Salary Reduction Agreement will be considered timely submitted, see the Method and Timing of Elections section in the Plan Document.

Unless an exception applies, as described in the Irrevocability of Elections and Exceptions section in the Plan Document, such election is irrevocable for the duration of the Period of Coverage to which it relates.

A.2 Benefit Contributions

The annual Contribution for the **PPP** is equal to the amount as set by the Employer, which may or may not be the same amount charged under the Health Plans.

A.3 Medical Benefits Provided Under the Health Plans

Medical benefits will be provided by the Health Plans, not this Plan. The types and amounts of medical benefits, the requirements for participation, and other terms and conditions of coverage and benefits of the Health Plans are set forth in the documents relating to that plan. No changes can be made under this Plan with respect to such Health Plans if such changes are not permitted under the applicable Health Plans.

All claims to receive benefits under the Health Plans shall be subject to and governed by the terms and conditions of the Health Plans and the rules, regulations, policies and procedures adopted in accordance therewith, as may be amended from time to time.

A.4 COBRA

To the extent required by COBRA, the Participant, Spouse and Dependent, as applicable, whose coverage terminates under the Health Plan because of a COBRA qualifying event and who is a qualified beneficiary as defined under COBRA, shall be given the opportunity to continue the same coverage that the Participant, Spouse or Dependent had under the Health Plan the day before the qualifying event for the periods prescribed by COBRA, on a self-pay basis. Such continuation coverage shall be subject to all conditions and limitations under COBRA.

A.5 Deduction Plans Provided Under the Voluntary Payroll Vendors

Voluntary payroll vendors must qualify for inclusion in this Plan under rules set forth in 1 CSR 10-15.010 and 1 CSR 10-4.010 in order for the vendors' products to be included within this Plan.

Deduction plans provided by the Voluntary Payroll Vendors are offered by such vendors, not this Plan. The types and amounts of benefits, the requirements for participation, and other terms and conditions of coverage and benefits of the plans provided by the Voluntary Payroll Vendors are set forth in the documents relating to those plans. No changes can be made under this Plan with respect to such plans if such changes are not permitted under the applicable plans. In addition, no changes may also be made under this Plan unless such changes are permitted by this Plan.

All claims to receive benefits under the plans provided by the Voluntary Payroll Vendors shall be subject to and governed by the terms and conditions of such plans and the rules, regulations, policies and procedures adopted in accordance therewith, as may be amended from time to time.

Schedule B
Health Flexible Spending Account

Unless otherwise specified, terms capitalized in this Schedule B shall have the same meaning as the defined terms in the Plan Document to which this Schedule is attached.

B.1 Benefits

An Employee not enrolled in the **HSA Contribution Benefit**, can elect to participate in the **Health FSA** by electing to receive Benefits in the form of reimbursements for Health Care Expenses. If elected, the Benefit Option will be funded by Participant Contributions on a pre-tax Salary Reduction basis as provided in the Employer and Participant Contributions section in the Plan Document.

Unless an exception applies as described in the Irrevocability of Elections and Exceptions section, such election is irrevocable for the duration of the Period of Coverage to which it relates.

The **HSA Contribution Benefit** cannot be elected with the **Health FSA**. In addition, a Participant who has an election for the **Health FSA** that is in effect on the last day of a Plan Year cannot elect the **HSA Contribution Benefit** for any of the first three calendar months following the close of that Plan Year, unless the balance in the Participant's **Health FSA** is $0 as of the last day of that Plan Year. For this purpose, a Participant's **Health FSA** balance is determined on a cash basis – that is, without regard to any claims that have been incurred but have not yet been reimbursed (whether or not such claims have been submitted).

B.2 Benefit Contributions

The annual Contribution for a Participant's **Health FSA** is equal to the annual Benefit amount elected by the Participant.

B.3 Eligible Health Care Expenses

Under the **Health FSA**, a Participant may receive reimbursement for Health Care Expenses incurred during the Period of Coverage for which an election is in force.

- **Incurred.** A Health Care Expense is incurred at the time the medical care or service giving rise to the expense is provided, and not when the Participant is formally billed for, is charged for, or pays for the medical care.

- **Health Care Expenses.** Health Care Expenses means expenses incurred by a Participant, or the Participant's Spouse or Dependent(s) covered under the **Health FSA** for medical care, as defined in Code §§213(d) and 106(f), other than expenses that are excluded by this Plan, but only to the extent that the Participant or other person incurring the expense is not reimbursed through any other accident or health plan.

- **Expenses That Are Not Reimbursable.** Insurance premiums are not reimbursable from the **Health FSA**. Other expenses that are not reimbursable are listed in Appendix A to the Plan Document.

B.4 Maximum and Minimum Benefits

- **Maximum Reimbursement Available; Uniform Coverage Rule.** The maximum dollar amount elected by the Participant for reimbursement of Health Care Expenses incurred during a Period of Coverage, reduced by prior reimbursements during the Period of Coverage, shall be available at all times during the Period of Coverage, regardless of the actual amounts credited to the Participant's **Health FSA**. Notwithstanding the foregoing, no reimbursements will be available for Health Care Expenses incurred after coverage under this Plan has terminated, unless the Participant has elected COBRA as provided below, or is entitled to submit expenses incurred during a Grace Period as provided below.

- **Payment** shall be made to the Participant in cash as reimbursement for Health Care Expenses incurred during the Period of Coverage for which the Participant's election is effective, or during a Grace Period as provided below, provided that the other requirements of this Section have been satisfied.

- **Maximum Dollar Limit.** The maximum annual benefit amount that a Participant may elect to receive under this Plan in the form of reimbursements for Health Care Expenses incurred in any Period of Coverage shall be the the maximum allowed under federal regulations (For Plan Year 2013, that amount is $2,500 and is subject to adjustments for future plan years). Reimbursements due for Health Care Expenses incurred by the Participant's Spouse or Dependent(s) shall be charged against the Participant's **Health FSA**.

- **Changes.** For subsequent Plan Years, the maximum dollar limit may be changed by the Plan Administrator and shall be communicated to Employees through the Salary Reduction Agreement or another document.

- **No Proration.** If a Participant enters the Plan mid-year or wishes to increase his or her election mid-year as permitted under this Plan, then the Participant may elect coverage or increase coverage respectively, up to the maximum annual benefit amount stated above. The maximum annual benefit amount will not be prorated.

- **Effect on Maximum Benefits If Election Change Permitted.** Any change in an election affecting annual Contributions to the **Health FSA** will also change the maximum reimbursement benefits for the balance of the Period of Coverage commencing on the election change effective date. Such maximum reimbursement benefits for the balance of the Period of Coverage shall be calculated by adding:

  - The aggregate Contribution for the period prior to such election change; to

  - The total Contribution for the remainder of such Period of Coverage to the **Health FSA**; reduced by

  - All reimbursements made during the entire Period of Coverage.

- **FMLA Leave.** Any change in an election for FMLA leave will change the maximum reimbursement benefits in accordance with FMLA or the regulations governing cafeteria plans.

- **Monthly Limits on Reimbursing OTC Drugs.** Only reasonable quantities of over-the-counter (OTC) drugs or medicines of the same kind may be reimbursed from a Participant's **Health FSA** in a single calendar month, even assuming that the drug otherwise meets the requirements of this Section, including that it is for medical care under Code §§213(d) and 106(f). Stockpiling is not permitted.

B.5 Establishment of Account

The Plan Administrator will establish and maintain a **Health FSA** with respect to each Participant who has elected to participate in the **Health FSA**, but will not create a separate fund or otherwise segregate assets for this purpose. The account established hereto will merely be a record keeping account with the purpose of keeping track of Contributions and determining forfeitures.

- **Crediting of Accounts.** A Participant's **Health FSA** will be credited following each Salary Reduction actually made during each Period of Coverage with an amount equal to the Salary Reduction actually made.

- **Debiting of Accounts.** A Participant's **Health FSA** will be debited during each Period of Coverage for any reimbursement of Health Care Expenses incurred during the Period of Coverage or during a Grace Period as provided below.

- **Available Amount Not Based on Credited Amount.** The amount available for reimbursement of Health Care Expenses is the amount as calculated according to the "Maximum Reimbursement Available" paragraph of this Section above. It is not based on the amount credited to the **Health FSA** at a particular point in time.

B.6 Use It or Lose It Rule; Forfeiture Of Account Balance

- **Use It or Lose It Rule.** Except for expenses incurred during an applicable Grace Period, if any balance remains in the Participant's **Health FSA** for a Period of Coverage after all reimbursements have been made for the Period of Coverage, then such balance shall not be carried over to reimburse the Participant for Health Care Expenses incurred during a subsequent Plan Year. The Participant shall forefeit all rights with respect to such balance. The Grace Period shall begin immediately following the end of the Plan Year and terminate on the 15th day of the third calendar month after the end of the Plan Year. Any Grace Period shall not take effect until the 2013 Plan Year. Funds set aside for the 2012 Plan Year can only be used to reimburse expenses incurred between January 1, 2012 and December 31, 2012. Claims must be submitted on or before April 15th of the year immediately following the close of the plan year in which the expenses were incurred.

- **Use of Forfeitures.** All forfeitures under this Plan shall be used as follows:

  - First, to offset any losses experienced by Employer during the Plan Year as a result of making reimbursements with respect to any Participant in excess of the Contributions paid by such Participant through Salary Reductions;

  - Second, to reduce the cost of administering the **Health FSA** during the Plan Year or the subsequent Plan Year (all such administrative costs shall be documented by the Plan Administrator); and

- To provide increased Benefits or compensation to all Participants in subsequent years in any weighted or uniform fashion that the Plan Administrator deems appropriate, consistent with applicable regulations.

- **Unclaimed Benefits.** Benefit payments that remain unclaimed by the close of the Plan Year following the Period of Coverage in which the Health Care Expense was incurred shall be forfeited and applied as described above.

B.7 Grace Period

- **Special Rules for Claims Incurred During a Grace Period**. Any Grace Period shall not take effect until the 2013 Plan Year. Funds set aside for the 2012 Plan Year can only be used to reimburse expenses incurred between January 1, 2012 and December 31, 2012. The Employer has the discretion to establish a grace period following the end of the Plan Year, as follows:

  - An individual may be reimbursed for Health Care Expenses incurred during a Grace Period from amounts remaining in his or her **Health FSA** Account at the end of the Plan Year to which that Grace Period relates ("Prior Plan Year **Health FSA** Amounts") if the individual is either:

    -

    - A qualified beneficiary as defined under COBRA who has COBRA coverage under the **Health FSA** Benefit Option on the last day of that Plan Year; or

    - A Participant with **Health FSA** coverage that is in effect on the last day of that Plan Year. As a clarification: A participant who terminates coverage before the last day of the Plan Year will not be reimbursed for expenses incurred during the Grace Period associated with that Plan Year. A terminated participant may only be reimbursed for expenses incurred during the participant's period of coverage (Health FSA participants' coverage ceases at the end of the month following the last contribution).

  - The Grace Period shall begin immediately following the end of the Plan Year and terminate on the 15th day of the third calendar month after the end of the Plan Year.

  - Prior Plan Year **Health FSA** Amounts may not be cashed out or converted to any other taxable or non-taxable Benefit Option. For example, Prior Plan Year **Health FSA** Amounts may not be used to reimburse Dependent Care Expenses.

  - Health Care Expenses incurred during a Grace Period and approved for reimbursement will be reimbursed first from any available Prior Plan Year **Health FSA** Amounts and then from any amounts that are available to reimburse expenses that are incurred during the current Plan Year. An individual's Prior Plan Year **Health FSA** Amounts will be debited for any reimbursement of Health Care Expenses incurred during the Grace Period that is made from such Prior Plan Year **Health FSA** Amounts.

  - Claims for reimbursement of Health Care Expenses incurred during a Grace Period must be submitted no later than April 15th following the close of the Plan Year to which the Grace Period relates in order to be reimbursed from Prior Plan Year **Health FSA** Amounts. Any

Prior Plan Year **Health FSA** Amounts that remain after all reimbursements have been made for the Plan Year and its related Grace Period shall not be carried over to reimburse the Participant for expenses incurred in any subsequent period. The Participant will forfeit all rights with respect to these amounts, which will be subject to the Plan's provisions regarding forfeitures.

B.8 Reimbursement Procedure

- **Timing.** Within 30 days after receipt by the Plan Administrator of a reimbursement claim from a Participant, the Employer will reimburse the Participant for the Participant's Health Care Expenses, or the Plan Administrator will notify the Participant that a claim has been denied. This time period may be extended for an additional 15 days for matters beyond the control of the Plan Administrator, including in cases where a reimbursement claim is incomplete. The Plan Administrator will provide written notice of any extension, including the reasons for the extension, and will allow the Participant 45 days from receipt of the written notice in which to complete an incomplete reimbursement claim.

- **Claims Substantiation.** A Participant who has elected to receive Health Care Reimbursement Benefits for a Period of Coverage may apply for reimbursement by submitting an application to the Plan Administrator by no later than the date set by the Plan Administrator each year, setting forth:

    - The person or persons on whose behalf Health Care Expenses have been incurred;
    - The nature and date of the expenses incurred;
    - The amount of the requested reimbursement;
    - A statement that such expenses have not otherwise been reimbursed and the Participant will not seek reimbursement through any other source; and
    - Other such details about the expenses that may be requested by the Plan Administrator in the reimbursement request form or otherwise.

  The application shall be accompanied by bills, invoices, or other statements from an independent third party showing that the Health Care Expenses have been incurred and the amounts of such expenses, together with any additional documentation that the Plan Administrator may request.

- **Claims Denied.** For appeal of claims that are denied, see the Appeals Procedure in the Plan Document.

- **Claims Ordering; No Reprocessing.** All claims for reimbursement will be paid in the order in which they are approved. Once paid, a claim will not be reprocessed or otherwise recharacterized solely for the purpose of paying it from amounts attributable to a different Plan Year or Period of Coverage.

B.9 Reimbursements After Termination; Limited COBRA Continuation

The Participant will not be able to receive reimbursements for Health Care Expenses incurred after participation terminates. However, except for expenses incurred during an appropriate Grace Period, such Participant, or the Participant's estate, may claim reimbursement for any Health Care Expenses incurred during the Period of Coverage prior to termination, provided that the Participant, or the Participant's estate, files a claim by the date established in the Reimbursement Procedure paragraphs above following the close of the Plan Year in which the Health Care Expense was incurred.

Notwithstanding any provision to the contrary in this Plan, to the extent required by COBRA, a Participant and such Participant's Spouse and Dependent(s), whose coverage terminates under the **Health FSA** because of a COBRA qualifying event, shall be given the opportunity to continue the same coverage that the Participant had under the **Health FSA** the day before the qualifying event, subject to all conditions and limitations under COBRA. The Contributions for such continuation coverage will be equal to the cost of providing the same coverage to an active employee taking into account all costs incurred by the Employee and the Employer plus a 2% administration fee. Specifically, an individual will be eligible for COBRA continuation coverage only if the Participant's remaining available amount is greater than the Participant's remaining Contribution payments at the time of the qualifying event, taking into account all claims submitted before the date of the qualifying event. Such individual will be notified if the individual is eligible for COBRA continuation coverage.

If COBRA is elected, COBRA coverage will be subject to the most current COBRA rules. COBRA will be available only for the remainder of the Plan Year in which the qualifying event occurs. Such COBRA coverage for the **Health FSA** will cease at the end of the Plan Year, except for expenses incurred during an appropriate Grace Period, and cannot be continued for the next Plan Year. Coverage may terminate sooner if the Contributions for a Period of Coverage are not received by the due date established by the Plan Administrator for that Period of Coverage. Continuation coverage is only granted after the Plan Administrator has received the Contributions for that period of coverage.

Contributions for coverage for **Health FSA** Benefits may be paid on a pre-tax basis for current Employees receiving taxable compensation, as may be permitted by the Plan Administrator on a uniform and consistent basis, but may not be prepaid from Contributions in one Plan Year to provide coverage that extends into a subsequent Plan Year, where COBRA coverage arises either:

- Because the Employee ceases to be eligible because of a reduction of hours; or
- Because the Employee's Dependent ceases to satisfy the eligibility requirements for coverage.

For all other individuals (for example, Employees who cease to be eligible because of retirement, termination of employment, or layoff), Contributions for COBRA coverage for **Health FSA** Benefits shall be paid on an after-tax basis, unless permitted otherwise by the Plan Administrator, in its discretion and on a uniform and consistent basis, but may not be prepaid from Contributions in one Plan Year to provide coverage that extends into a subsequent Plan Year.

B.10 Qualified Reservist Distribution

If a Participant meets all of the following conditions, the Participant may elect to receive a qualified reservist distribution from the **Health FSA**:

- The Participant's Contributions to the **Health FSA** for the Plan Year as of the date the qualified reservist distribution is requested exceeds the reimbursements the Participant has received from the **Health FSA** for the Plan Year as of that date.

- The Participant is ordered or called to active military duty for a period of at least 180 days or for an indefinite period by reason of being a member of the Army National Guard of the United States, the Army Reserve, the Navy Reserve, the Marine Corps Reserve, the Air National Guard of the United States, the Air Force Reserve, the Coast Guard Reserve, or the Reserve Corps of the Public Health Service.

- The Participant has provided the Plan Administrator with a copy of the order or call to active duty. An order or call to active duty of less than 180 days' duration must be supplemented by subsequent calls or orders to reach a total of 180 or more days.

- The Participant is ordered or called to active military duty on or after April 1, 2009, or the Participant's period of active duty begins before April 1, 2009 and continues on or after the date.

- During the period beginning on the date of the Participant's order or call to active duty and ending on the last day of the Plan Year during which the order or call occurred, the Participant submits a qualified reservist distribution election form to the Plan Administrator.

Amount of Qualified Reservist Distribution. If the above conditions are met, the Participant will receive a distribution from the **Health FSA** equal to his or her Contributions to the **Health FSA** for the Plan Year as of the date of the distribution request, minus any reimbursements received for the Plan Year as of that date.

No Reimbursement for Expenses Incurred After Distribution Request. Once a Participant requests a qualified reservist distribution, the Participant forfeits the right to receive reimbursements for Health Care Expenses incurred during the period that begins on the date of the distribution request and ends on the last day of the Plan Year. The Participant may, however, continue to submit claims for Health Care Expenses that were incurred before the date of the distribution request (even if the claims are submitted after the date of the qualified reservist distribution), so long as the total dollar amount of the claims does not exceed the amount of the **Health FSA** election for the Plan Year, minus the sum of the qualified reservist distribution and the prior **Health FSA** reimbursements for the Plan Year.

Tax Treatment of a Qualified Reservist Distribution. If the Participant receives a qualified reservist distribution, it will be included in his or her gross income and will be reported as wages on the Participant's Form W-2 for the year in which it is paid.

B.11 Named Fiduciary

The Plan Administrator is the Named Fiduciary for the **Health FSA**.

B.12 Coordination of Benefits

Health FSAs are intended to pay Benefits solely for Health Care Expenses not previously reimbursed or reimbursable elsewhere. Accordingly, the **Health FSA** shall not be considered a group health plan for

coordination of benefits purposes, and the **Health FSA** shall not be taken into account when determining benefits payable under any other plan.

Schedule C
HSA Contribution Benefit

Unless otherwise specified, terms capitalized in this Schedule C shall have the same meaning as the defined terms in the Plan Document to which this Schedule is attached.

C.1 HSA Tax Advantages

An Employee may elect to participate in the **HSA Contribution Benefit** by electing to pay the Contributions on a pre-tax Salary Reduction basis to the Employee's Health Savings Account (HSA) established and maintained outside the Plan by a trustee/custodian to which the Employer can forward Contributions to be deposited. This funding feature constitutes the **HSA Contribution Benefit**.

As described more fully herein, such election can be increased, decreased or revoked prospectively at any time during the Plan Year, effective no later than the first day of the next calendar month following the date that the election change was filed.

C.2 Establishing an HSA

For administrative convenience, the Employer may chose to make Contributions for Employees to HSAs established at a bank selected by the Employer or limit the number of HSA providers to whom it will forward Contributions-such a list is not an endorsement of any HSA provider. The selected bank will be an authorized HSA trustee. The forms necessary to establish an HSA at the selected bank will be provided to Participants. Participants are responsible for managing their own **HSA**, including choosing how **HSA** funds are invested and following the rules of the selected bank and the IRS. Once the Employer Contributions have been deposited in a Participant's **HSA Contribution Benefit**, the Participant has a non-forfeitable interest in the funds and is free to request a distribution of the funds or to move them to another **HSA** provider, to the extent permitted by law.

The HSA Contribution Benefit cannot be elected with the **Health FSA**. In addition, a Participant who has an election for the **Health FSA** that is in effect on the last day of a Plan Year cannot elect the **HSA Contribution Benefit** for any of the first three calendar months following the close of that Plan Year, unless the balance in the Participant's **Health FSA** is $0 as of the last day of the Plan Year. For this purpose, a Participant's **Health FSA** balance is determined on a cash basis -- that is, without regard to claims that have been incurred but have not yet been reimbursed (whether or not such claims have been submitted).

C.3 Certification of HSA Contribution Benefit Eligibility

To be eligible for the **HSA Contribution Benefit**, an HSA Employee must certify to the Employer that he or she is eligible for an HSA contribution and does not have any non-HDHP coverage. A married Participant must also certify that his or her Spouse does not have any non-HDHP coverage. A Participant is required to notify the Employer immediately if there are any changes in the information contained in the certification. Failure to provide accurate and updated information could cause the **HSA Contribution Benefit** to be included in a Participant's gross income and may also be subject to excise tax.

C.4 Maximum Contribution

The annual Contribution for a Participant's **HSA Contribution Benefit** is equal to the annual Benefit amount elected by the Participant. In no event shall the amount elected exceed the statutory maximum amount for HSA contributions applicable to the Participant's HDHP coverage option for the calendar year in which the Contribution is made (for calendar year 2013, $3,250 for self-coverage or $6,450 for family coverage).

Participants age 55 or older may make an additional catch-up Contribution of $1,000 per year.

In addition, the maximum annual Contribution shall be:

- Reduced by any matching or other Employer Contribution made on the Participant's behalf; and
- Prorated for the number of months in which the Participant is an HSA Eligible Individual.

C.5 Recording Contributions for HSA

The Plan Administrator will maintain records to keep track of Contributions an Employee makes via pre-tax Salary Reductions to his or her HSA, but it will not create a separate fund or otherwise segregate assets for this purpose. The Employer has no authority or control over the funds deposited in an HSA.

C.6 Distributions from HSA Contribution Benefit

Distribution from an **HSA Contribution Benefit** will be tax-free if the distribution is for expenses incurred for a Participant's health care as defined in IRC §213(d) or the health care of a Participant's legal Spouse or tax Dependents. Expenses must have been incurred after the establishment of the **HSA Contribution Benefit** to be tax-free. **HSA Contribution Benefit** distributions used to pay insurance premiums will not be tax-free unless they are used for COBRA coverage, qualified long-term care insurance, health insurance maintained while the individual is receiving unemployment compensation under federal or state law, or health insurance for an individual age 65 or over, other than a Medicare supplemental policy.

C.7 Tax Treatment of HSA Contributions and Distributions

The tax treatment of the HSA is governed by Code §223.

C.8 Reporting Issues

Each Participant will be responsible for reporting Contributions made to his or her **HSA Contribution Benefit** and for reporting distributions from the HSA. A Participant is also responsible for reporting whether or not HSA distributions were used for qualified health expenses or whether the distributions were taxable. A Participant should maintain records sufficient to demonstrate whether or not distributions were taxable.

C.9 Voluntary Participation

Participation in the **HSA Contribution Benefit** is entirely voluntary and may be terminated at any time by notifying the Employer. Although the Employer expects to continue this **HSA Contribution Benefit**

indefinitely, it has the right to amend or terminate **HSA Contribution Benefit** at any time and for any reason. It is also possible that changes to the program will be necessary or advisable as a result of future changes in state or federal tax laws.

C.10 HSA Not Intended to be an ERISA Plan

The **HSA Contribution Benefit** under this Plan consist solely of the ability to make Contributions to the HSA on a pre-tax Salary Reduction basis. Terms and conditions of coverage and Benefits will be provided by and are set forth in the HSA, not this Plan. The terms and conditions of each Participant's HSA trust or custodial account are described in the HSA trust or custodial agreement provided by the applicable trustee/custodian to each electing Participant and are not a part of this Plan.

The HSA is not an employer-sponsored employee benefits plan. It is a savings account that is established and maintained by an HSA trustee/custodian outside this Plan to be used primarily for reimbursement of "qualified eligible health expenses" as set forth in Code §223(d)(2). The Employer has no authority or control over the funds deposited in a HSA. Even though this Plan may allow pre-tax Salary Reduction contributions to an HSA, the HSA is not intended to be an ERISA benefit plan sponsored or maintained by the Employer.

Schedule D
Dependent Care Assistance Program

Unless otherwise specified, terms capitalized in this Schedule D shall have the same meaning as the defined terms in the Plan Document to which this Schedule is attached.

D.1 Benefits

An Employee can elect to participate in the **DCAP** to receive Benefits in the form of reimbursements for Dependent Care Expenses. If elected, the Benefit Option will be funded by the Participant on a pre-tax Salary Reduction basis. Unless an exception applies, as described in the Irrevocability of Elections and Exceptions section above, such election is irrevocable for the duration of the Period of Coverage to which it relates.

D.2 Benefit Contributions

The annual Contribution for a Participant's **DCAP** Benefits is equal to the annual Benefit amount elected by the Participant, subject to the Maximum Benefits paragraph below.

D.3 Eligible Dependent Care Expenses

Under the **DCAP**, a Participant may receive reimbursement for Dependent Care Expenses incurred during the Period of Coverage or Grace Period for which an election is in force.

- **Incurred.** A Dependent Care Expense is "incurred" at the time the Qualifying Dependent Care Service giving rise to the expense is provided, and not when the Participant is formally billed for, is charged for, or pays for the Qualifying Dependent Care Services.

- **Dependent Care Expenses.** Dependent Care Expenses means expenses that are considered to be:

  - Employment-related expenses under Code §21(b)(2) relating to expenses for the care of a Qualifying Individual necessary for gainful employment of the Employee and Spouse; and

  - Expenses for incidental household services, if incurred by the Employee to obtain Qualifying Dependent Care Services, but only to the extent that the Participant or other person incurring the expense is not reimbursed for the expense through any other Plan.

  If only a portion of a Dependent Care Expense has been reimbursed elsewhere, the **DCAP** can reimburse the remaining portion of such Expense if it otherwise meets the requirements of this Schedule.

- **Qualifying Individual.** A Qualifying Individual is:

  - A tax dependent of the Participant as defined in Code §152 who is under the age of 13 and who is the Participant's qualifying child as defined in Code §152(a)(1);

- A tax dependent of the Participant as defined in Code §152, who is physically or mentally incapable of self-care and who has the same principal place of abode as the Participant for more than half of the year; or

- A Participant's Spouse, as defined in Code §152, who is physically or mentally incapable of self-care, and who has the same principal place of abode as the Participant for more than half of the year.

In the case of divorced or separated parents, a child shall be treated as a Qualifying Individual of the custodial parent within the meaning of Code §152(e).

- **Qualifying Dependent Care Services.** Qualifying Dependent Care Services means services that both:

  - Relate to the care of a Qualifying Individual that enable the Participant and Spouse to remain gainfully employed after the date of participation in the **DCAP** and during the Period of Coverage; and

  - Are performed:

    - In the Participant's home; or

    - Outside the Participant's home for:

      - The care of a Participant's Dependent who is under age 13; or

      - The care of any other Qualifying Individual who regularly spends at least 8 hours per day in the Participant's household.

In addition, if the expenses are incurred for services provided by a facility that provides care for more than six individuals not residing at the facility and that receives a fee, payment or grant for such services, then the facility must comply with all applicable state and local laws and regulations.

- **Exclusions.** Dependent Care Expenses do not include amounts paid to or for:

  - An individual with respect to whom a personal exemption is allowable under Code §151(c) to a Participant or Participant's Spouse;

  - A Participant's Spouse;

  - A Participant's child, as defined in Code §152(f)(1), who is under 19 years of age at the end of the year in which the expenses were incurred; and

  - A Participant's Spouse's child, as defined in Code §152 (a)(i), who is under 19 years of age at the end of the year in which the expenses were incurred.

D.4 Maximum Benefit

- **Maximum Reimbursement Available and Statutory Limits.** The maximum dollar amount elected by the Participant for reimbursement of Dependent Care Expenses incurred during a Period of Coverage shall only be available during the Period of Coverage to the extent of the actual amounts credited to the Participant's **DCAP** less amounts debited to the Participant's **DCAP** pursuant to the Maximum Contribution paragraph below.

  Payment shall be made to the Participant as reimbursement for Dependent Care Expenses incurred during the Period of Coverage for which the Participant's election is effective, provided that the other requirements of this Section have been satisfied.

  No reimbursement otherwise due to a Participant hereunder shall be made to the extent that such reimbursement, when combined with the total amount of reimbursements made to date for the Plan Year, would exceed the year to date amount of Participant Contributions to the **DCAP** for the Period of Coverage or applicable statutory limit.

- **Maximum Dollar Limit.** The maximum dollar limit for a Participant is the smallest of the following amounts:

  - The Participant's Earned Income for the calendar year;
  - The Earned Income for the calendar year of the Participant's Spouse who:
    - Is not employed during a month in which the Participant incurs a Dependent Care Expense; and
    - Is either physically or mentally incapable of self-care or a full-time Student shall be deemed to have Earned Income in the amount of $250 per month per Qualifying Individual for whom the Participant incurs Dependent Care Expenses, up to a maximum amount of $500 per month); or
  - $5,000 for the calendar year or the maximum allowed under federal regulations, if:
    - The Participant is married and files a joint federal income tax return; or
    - The Participant is married, files a separate federal income tax return, and meets the following conditions:
      - The Participant maintains as his or her home a household that constitutes, for more than half of the taxable year, the principal abode of a Qualifying Individual;
      - The Participant furnishes over half of the cost of maintaining such household during the taxable year; and
      - During the last six months of the taxable year, the Participant's Spouse is not a member of such household; or
    - The Participant is single or is the head of the household for federal income tax purposes.

- $2,500 for the calendar year, or the maximum allowed under federal regulation, if the Participant is married and resides with the Spouse, but files a separate federal income tax return.

- **Changes.** For subsequent Plan Years, the maximum and minimum dollar limit may be changed by the Plan Administrator and shall be communicated to Employees through the Salary Reduction Agreement or another document.

- **No Proration.** If a Participant enters the Plan mid-year or wishes to increase his or her election mid-year as permitted under this Plan, then the Participant may elect coverage or increase coverage respectively, up to the maximum annual benefit amount stated above. The maximum annual benefit amount will not be prorated.

- **Effect on Maximum Benefits If Election Change Permitted.** Any change in an election affecting annual Contributions to the **DCAP** component will also change the maximum reimbursement Benefits for the balance of the Period of Coverage commencing with the election change effective date. Such maximum reimbursement Benefits for the balance of the Period of Coverage shall be calculated by adding:

  - The aggregate Contribution for the period prior to such election change; to

  - The total Contribution for the remainder of such Period of Coverage to the **DCAP**; reduced by

  - All reimbursements made during the entire Period of Coverage.

D.5 Establishment of Account

The Plan Administrator will establish and maintain a **DCAP** with respect to each Participant who has elected to participate in the **DCAP**, but will not create a separate fund or otherwise segregate assets for this purpose. The account so established will merely be a record keeping account with the purpose of keeping track of Contributions and determining forfeitures.

- **Crediting of Accounts.** A Participant's **DCAP** will be credited following each Salary Reduction actually made during each Period of Coverage with an amount equal to the Salary Reduction actually made.

- **Debiting of Accounts.** A Participant's **DCAP** will be debited during each Period of Coverage for any reimbursement of Dependent Care Expenses incurred during the Period of Coverage.

- **Available Amount is Based on Credited Amount.** The amount available for reimbursement of Dependent Care Expenses may not exceed the year-to-date amount credited to the Participant's **DCAP**, less any prior reimbursements. A Participant's **DCAP** may not have a negative balance during a Period of Coverage.

D.6 Grace Period and Unused Year End Balance

- **Grace Period**. The Employer has the discretion to establish a grace period following the end of the Plan Year as follows. Any Grace Period shall not take effect until the 2013 Plan Year. Funds

set aside for the 2012 Plan Year can only be used to reimburse expenses incurred between January 1, 2012 and December 31, 2012. If a Participant has unused funds in his or her **DCAP** at the end of the Plan Year and the Participant is still an active Participant on the last day of the Plan year, such Participant is allowed to carry over the unused balance for reimbursement of Dependent Care Expenses incurred during the Grace Period. Unused funds in a Participant's **DCAP** may not be used to reimburse another Benefit Option the Participant may have elected. The Grace Period shall begin immediately following the end of the Plan Year and terminate on the 15th day of the third calendar month after the end of the Plan Year.

- **Use It or Lose It Rule**. Except for expenses incurred in an applicable Grace Period, if any balance remains in the Participant's **DCAP** after all reimbursements have been made for the Period of Coverage, it shall not be carried over to reimburse the Participant for Dependent Care Expenses incurred during the subsequent Plan Year. The Participant shall forfeit all rights with respect to such balance. Claims must be submitted on or before April 15th of the year immediately following the close of the plan year in which the expenses were incurred.

- **Use of Forfeiture.** All forfeitures shall be used by the Plan in the following ways:

  - To offset any losses experienced by the Employer during the Plan Year as a result of making reimbursements with respect to all Participants in excess of the Contributions paid by such Participant through Salary Reduction;

  - To reduce the cost of administering the **DCAP** during the Plan Year or the subsequent Plan Year (all such administrative costs shall be documented by the Plan Administrator); and

  - To provide increased Benefits or Compensation to Participants in subsequent years in any weighted or uniform fashion the Plan Administrator deems appropriate, and consistent with applicable regulations.

- **Unclaimed Benefits.** Any **DCAP** Benefit payments that are unclaimed by the close of the Plan Year following the Period of Coverage or Grace Period in which the Dependent Care Expense was incurred shall be applied as described above.

D.7 Reimbursement Procedure

- **Timing.** Within 30 days after receipt by the Plan Administrator of a reimbursement claim from a Participant, the Employer will reimburse the Participant for the Participant's Dependent Care Expenses or the Plan Administrator will notify the Participant that a claim has been denied. This time period may be extended an additional 15 days for matters beyond the control of the Plan Administrator, including in cases where a reimbursement claim is incomplete. The Plan Administrator will provide written notice of any extension, including the reasons for the extension, and will allow the Participant 45 days from receipt of the written notice in which to complete an incomplete reimbursement claim.

- **Claims Substantiation.** A Participant who has elected to receive **DCAP** Benefits for a Period of Coverage may apply for reimbursement by completing, signing, and returning an application to the Plan Administrator by no later than the date set by the Plan Administrator each year, setting forth:

- The person or persons on whose behalf Dependent Care Expenses have been incurred;
- The nature and date of the expenses incurred;
- The amount of the requested reimbursement;
- The name of the person, organization or entity to whom the expense was or is to be paid;
- A statement that such expenses have not otherwise been reimbursed and the Participant will not seek reimbursement through any other source;
- The Participant's certification that he or she has no reason to believe that the reimbursement refunded, added to other reimbursements to date will exceed the limit herein; and
- Other such details about the expenses that may be requested by the Plan Administrator.

The Participant shall include bills, invoices, or other statements from an independent third party showing that the Dependent Care Expenses have been incurred and the amounts of such expenses, together with any additional documentation that the Plan Administrator may request.

- **Claims Denied.** For appeals of claims that are denied, see the Appeals Procedure in the Plan Document.

D.8 Reimbursements After Termination

If a Participant's employment terminates, the Participant may submit for reimbursement Dependent Care Expenses incurred before the last day of the Plan year (even if after the date of termination) up to the amount of the Participant's remaining **DCAP** Benefits. As a clarification: A participant who terminates coverage before the last day of the Plan Year will not be reimbursed for expenses incurred during the Grace Period associated with that Plan Year. A terminated participant may only be reimbursed for expenses incurred during the participant's period of coverage (DCAP participants' coverage ceases on the last day of the Plan year).

D.9 DCAP Participant vs. Claiming the Dependent Care Tax Credit

Employees often have the choice between participating in their employer's **DCAP** on a Salary Reduction basis or taking a Dependent Care Tax Credit under Code §21. Employees cannot take advantage of both tax benefit options. Employees with questions regarding which option is best should consult with an accountant.

Schedule E
Limited Scope Health Flexible Spending Account

Unless otherwise specified, terms capitalized in this Schedule E shall have the same meaning as the defined terms in the Plan Document to which this Schedule is attached.

E.1 Benefits

An Employee, not enrolled in the **Health FSA**, can elect to participate in the **Limited Scope Health FSA** by electing to receive Benefits in the form of reimbursements for dental and vision expenses. If elected, the Benefit Option will be funded by Participant Contributions on a pre-tax Salary Reduction basis as provided in the Employer and Participant Contributions section in the Plan Document.

Unless an exception applies as described in the Irrevocability of Elections and Exceptions section, such election is irrevocable for the duration of the Period of Coverage to which it relates.

The **HSA Contribution Benefit** may be elected with the **Limited Scope Health FSA.**

E.2 Benefit Contributions

The annual Contribution for a Participant's **Limited Scope Health FSA** is equal to the annual Benefit amount elected by the Participant.

E.3 Eligible Dental and Vision Expenses

Under the **Limited Scope Health FSA**, a Participant may receive reimbursement for dental and vision expenses incurred during the Period of Coverage for which an election is in force.

- **Incurred.** A dental or vision expense is incurred at the time the dental or vision care or service giving rise to the expense is provided, and not when the Participant is formally billed for, is charged for, or pays for the care.

- **Dental and Vision Expenses.** Dental and Vision Expenses means expenses incurred by a Participant, the Participant's Spouse or Dependent(s) covered under the **Limited Scope Health FSA** within the meaning of "health care" as defined in Code §§213(d) and 106(f), provided, however, that such expense is for vision or dental care only. This term does not include expenses that are excluded under Appendix A to this Plan, nor any expenses for which the Participant or other person incurring the expense is reimbursed for the expense through the Health Plan, other insurance, or any other accident or health plan. If only a portion of a Health Care Expense has been reimbursed elsewhere, then the **Limited Scope Health FSA** can reimburse the remaining portion of such Expense if it otherwise meets the requirements of this Section.

- **Expenses That Are Not Reimbursable.** Insurance premiums are not reimbursable from the **Limited Scope Health FSA**. Other expenses that are not reimbursable are listed in Appendix A to the Plan Document.

E.4 Maximum and Minimum Benefits

- **Maximum Reimbursement Available; Uniform Coverage Rule.** The maximum dollar amount elected by the Participant for reimbursement of Dental and Vision Expenses incurred during a Period of Coverage, reduced by prior reimbursements during the Period of Coverage, shall be available at all times during the Period of Coverage, regardless of the actual amounts credited to the Participant's **Limited Scope Health FSA**. Notwithstanding the foregoing, no reimbursements will be available for Dental and Vision Expenses incurred after coverage under this Plan has terminated, unless the Participant has elected COBRA as provided below, or is entitled to submit expenses incurred during a Grace Period as provided below.

- **Payment** shall be made to the Participant in cash as reimbursement for Dental and Vision Expenses incurred during the Period of Coverage for which the Participant's election is effective, or during a Grace Period as provided below, provided that the other requirements of this Section have been satisfied.

- **Maximum Dollar Limit.** The maximum annual benefit amount that a Participant may elect to receive under this Plan in the form of reimbursements for Dental and Vision Expenses incurred in any Period of Coverage shall be the the maximum allowed under federal regulations (For Plan Year 2013, that amount is $2,500 and is subject to adjustments for future plan years). Reimbursements due for Dental and Vision Expenses incurred by the Participant's Spouse or Dependent(s) shall be charged against the Participant's **Limited Scope Health FSA**.

- **Changes.** For subsequent Plan Years, the maximum dollar limit may be changed by the Plan Administrator and shall be communicated to Employees through the Salary Reduction Agreement or another document.

- **No Proration**. If a Participant enters the Plan mid-year or wishes to increase his or her election mid-year as permitted under this Plan, then the Participant may elect coverage or increase coverage respectively, up to the maximum annual benefit amount stated above. The maximum annual benefit amount will not be prorated.

- **Effect on Maximum Benefits If Election Change Permitted**. Any change in an election affecting annual Contributions to the **Limited Scope Health FSA** will also change the maximum reimbursement benefits for the balance of the Period of Coverage commencing on the election change effective date. Such maximum reimbursement benefits for the balance of the Period of Coverage shall be calculated by adding:

  - The aggregate Contribution for the period prior to such election change; to

  - The total Contribution for the remainder of such Period of Coverage to the **Limited Scope Health FSA**; reduced by

  - All reimbursements made during the entire Period of Coverage.

- **FMLA Leave.** Any change in an election for FMLA leave will change the maximum reimbursement benefits in accordance with FMLA or the regulations governing cafeteria plans.

- **Monthly Limits on Reimbursing OTC Drugs.** Only reasonable quantities of over-the-counter (OTC) drugs or medicines of the same kind may be reimbursed from a Participant's **Limited Scope Health FSA** in a single calendar month, even assuming that the drug otherwise meets the requirements of this Section, including that it is for dental or vision care under Code §§213(d) and 106(f). Stockpiling is not permitted.

E.5 Establishment of Account

The Plan Administrator will establish and maintain a **Limited Scope Health FSA** with respect to each Participant who has elected to participate in the **Limited Scope Health FSA**, but will not create a separate fund or otherwise segregate assets for this purpose. The account established hereto will merely be a record keeping account with the purpose of keeping track of Contributions and determining forfeitures.

- **Crediting of Accounts**. A Participant's **Limited Scope Health FSA** will be credited following each Salary Reduction actually made during each Period of Coverage with an amount equal to the Salary Reduction actually made.

- **Debiting of Accounts**. A Participant's **Limited Scope Health FSA** will be debited during each Period of Coverage for any reimbursement of Dental and Vision Expenses incurred during the Period of Coverage or during a Grace Period as provided below.

- **Available Amount Not Based on Credited Amount**. The amount available for reimbursement of Dental and Vision Expenses is the amount as calculated according to the "Maximum Reimbursement Available" paragraph of this Section above. It is not based on the amount credited to the **Limited Scope Health FSA** at a particular point in time.

E.6 Use It or Lose It Rule; Forfeiture Of Account Balance

- **Use It or Lose It Rule.** Except for expenses incurred during an applicable Grace Period, if any balance remains in the Participant's **Limited Scope Health FSA** for a Period of Coverage after all reimbursements have been made for the Period of Coverage, then such balance shall not be carried over to reimburse the Participant for Dental and Vision Expenses incurred during a subsequent Plan Year. The Participant shall forefeit all rights with respect to such balance. The Grace Period shall begin immediately following the end of the Plan Year and terminate on the 15th day of the third calendar month after the end of the Plan Year. Any Grace Period shall not take effect until the 2013 Plan Year. Funds set aside for the 2012 Plan Year can only be used to reimburse expenses incurred between January 1, 2012 and December 31, 2012. Claims must be submitted on or before April 15th of the year immediately following the close of the plan year in which the expenses were incurred.

- **Use of Forfeitures**. All forfeitures under this Plan shall be used as follows:

  - First, to offset any losses experienced by Employer during the Plan Year as a result of making reimbursements with respect to any Participant in excess of the Contributions paid by such Participant through Salary Reductions;

- Second, to reduce the cost of administering the **Limited Scope Health FSA** during the Plan Year or the subsequent Plan Year (all such administrative costs shall be documented by the Plan Administrator); and

- To provide increased Benefits or compensation to all Participants in subsequent years in any weighted or uniform fashion that the Plan Administrator deems appropriate, consistent with applicable regulations.

- **Unclaimed Benefits.** Benefit payments that remain unclaimed by the close of the Plan Year following the Period of Coverage in which the Dental and Vision Expense was incurred shall be forfeited and applied as described above.

E.7 Grace Period

- **Special Rules for Claims Incurred During a Grace Period.** Any Grace Period shall not take effect until the 2013 Plan Year. Funds set aside for the 2012 Plan Year can only be used to reimburse expenses incurred between January 1, 2012 and December 31, 2012. The Employer has the discretion to establish a grace period following the end of the Plan Year, as follows:

  An individual may be reimbursed for Dental and Vision Expenses incurred during a Grace Period from amounts remaining in his or her **Limited Scope Health FSA** Account at the end of the Plan Year to which that Grace Period relates ("Prior Plan Year **Limited Scope Health FSA** Amounts") if the individual is either:

  - A qualified beneficiary **as defined under COBRA** who has COBRA coverage under the **Limited Scope Health FSA** Benefit Option on the last day **of that Plan Year; or**

  - **A** Participant with **Limited Scope Health FSA** coverage that is **in effect on the last day** of that Plan Year. As a clarification: A participant who terminates coverage before the last day of the Plan Year will not be reimbursed for expenses incurred during the Grace Period associated with that Plan Year. A terminated participant may only be reimbursed for expenses incurred during the participant's period of coverage (Limited Scope Health FSA participants' coverage ceases at the end of the month following the last contribution).

  - Prior Plan Year **Limited Scope Health FSA** Amounts may not be cashed out or converted to any other taxable or non-taxable Benefit Option. For example, Prior Plan Year **Limited Scope Health FSA** Amounts may not be used to reimburse Dependent Care Expenses.

  - Dental and Vision Expenses incurred during a Grace Period and approved for reimbursement will be reimbursed first from any available Prior Plan Year **Limited Scope Health FSA** Amounts and then from any amounts that are available to reimburse expenses that are incurred during the current Plan Year. An individual's Prior Plan Year **Limited Scope Health FSA** Amounts will be debited for any reimbursement of Dental and Vision Expenses incurred during the Grace Period that is made from such Prior Plan Year **Limited Scope Health FSA** Amounts.

  - Claims for reimbursement of Dental and Vision Expenses incurred during a Grace Period must be submitted no later than April 15th following the close of the Plan Year to which the

Grace Period relates in order to be reimbursed from Prior Plan Year **Limited Scope Health FSA** Amounts. Any Prior Plan Year **Limited Scope Health FSA** Amounts that remain after all reimbursements have been made for the Plan Year and its related Grace Period shall not be carried over to reimburse the Participant for expenses incurred in any subsequent period. The Participant will forfeit all rights with respect to these amounts, which will be subject to the Plan's provisions regarding forfeitures.

E.8 Reimbursement Procedure

- **Timing.** Within 30 days after receipt by the Plan Administrator of a reimbursement claim from a Participant, the Employer will reimburse the Participant for the Participant's Dental and Vision Expenses, or the Plan Administrator will notify the Participant that a claim has been denied. This time period may be extended for an additional 15 days for matters beyond the control of the Plan Administrator, including in cases where a reimbursement claim is incomplete. The Plan Administrator will provide written notice of any extension, including the reasons for the extension, and will allow the Participant 45 days from receipt of the written notice in which to complete an incomplete reimbursement claim.

- **Claims Substantiation.** A Participant who has elected to receive Limited Scope Dental and Vision Reimbursement Benefits for a Period of Coverage may apply for reimbursement by submitting an application to the Plan Administrator by no later than the date set by the Plan Administrator each year, setting forth:

  - The person or persons on whose behalf Dental and Vision Expenses have been incurred;
  - The nature and date of the expenses incurred;
  - The amount of the requested reimbursement;
  - A statement that such expenses have not otherwise been reimbursed and the Participant will not seek reimbursement through any other source; and
  - Other such details about the expenses that may be requested by the Plan Administrator in the reimbursement request form or otherwise.

  The application shall be accompanied by bills, invoices, or other statements from an independent third party showing that the Dental and Vision Expenses have been incurred and the amounts of such expenses, together with any additional documentation that the Plan Administrator may request.

- **Claims Denied.** For appeal of claims that are denied, see the Appeals Procedure in the Plan Document.

- **Claims Ordering; No Reprocessing.** All claims for reimbursement will be paid in the order in which they are approved. Once paid, a claim will not be reprocessed or otherwise recharacterized solely for the purpose of paying it from amounts attributable to a different Plan Year or Period of Coverage.

E.9 Reimbursements After Termination; Limited COBRA Continuation

The Participant will not be able to receive reimbursements for Dental and Vision Expenses incurred after participation terminates. However, except for expenses incurred during an appropriate Grace Period, such Participant, or the Participant's estate, may claim reimbursement for any Dental and Vision Expenses incurred during the Period of Coverage prior to termination, provided that the Participant, or the Participant's estate, files a claim by the date established in the Reimbursement Procedure paragraphs above following the close of the Plan Year in which the Dental or Vision Expense was incurred.

Notwithstanding any provision to the contrary in this Plan, to the extent required by COBRA, a Participant and such Participant's Spouse and Dependent(s), whose coverage terminates under the **Limited Scope Health FSA** because of a COBRA qualifying event, shall be given the opportunity to continue the same coverage that the Participant had under the **Limited Scope Health FSA** the day before the qualifying event, subject to all conditions and limitations under COBRA. The Contributions for such continuation coverage will be equal to the cost of providing the same coverage to an active employee taking into account all costs incurred by the Employee and the Employer plus a 2% administration fee. Specifically, an individual will be eligible for COBRA continuation coverage only if the Participant's remaining available amount is greater than the Participant's remaining Contribution payments at the time of the qualifying event, taking into account all claims submitted before the date of the qualifying event. Such individual will be notified if the individual is eligible for COBRA continuation coverage.

If COBRA is elected, COBRA coverage will be subject to the most current COBRA rules. COBRA will be available only for the remainder of the Plan Year in which the qualifying event occurs. Such COBRA coverage for the **Limited Scope Health FSA** will cease at the end of the Plan Year, except for expenses incurred during an appropriate Grace Period, and cannot be continued for the next Plan Year. Coverage may terminate sooner if the Contributions for a Period of Coverage are not received by the due date established by the Plan Administrator for that Period of Coverage. Continuation coverage is only granted after the Plan Administrator has received the Contributions for that period of coverage.

Contributions for coverage for **Limited Scope Health FSA** Benefits may be paid on a pre-tax basis for current Employees receiving taxable compensation, as may be permitted by the Plan Administrator on a uniform and consistent basis, but may not be prepaid from Contributions in one Plan Year to provide coverage that extends into a subsequent Plan Year, where COBRA coverage arises either:

- Because the Employee ceases to be eligible because of a reduction of hours; or
- Because the Employee's Dependent ceases to satisfy the eligibility requirements for coverage.

For all other individuals (for example, Employees who cease to be eligible because of retirement, termination of employment, or layoff), Contributions for COBRA coverage for **Limited Scope Health FSA** Benefits shall be paid on an after-tax basis, unless permitted otherwise by the Plan Administrator, in its discretion and on a uniform and consistent basis, but may not be prepaid from Contributions in one Plan Year to provide coverage that extends into a subsequent Plan Year.

E.10 Qualified Reservist Distribution

If a Participant meets all of the following conditions, the Participant may elect to receive a qualified reservist distribution from the **Limited Scope Health FSA**:

- The Participant's Contributions to the **Limited Scope Health FSA** for the Plan Year as of the date the qualified reservist distribution is requested exceeds the reimbursements the Participant has received from the **Limited Scope Health FSA** for the Plan Year as of that date.

- The Participant is ordered or called to active military duty for a period of at least 180 days or for an indefinite period by reason of being a member of the Army National Guard of the United States, the Army Reserve, the Navy Reserve, the Marine Corps Reserve, the Air National Guard of the United States, the Air Force Reserve, the Coast Guard Reserve, or the Reserve Corps of the Public Health Service.

- The Participant has provided the Plan Administrator with a copy of the order or call to active duty. An order or call to active duty of less than 180 days' duration must be supplemented by subsequent calls or orders to reach a total of 180 or more days.

- The Participant is ordered or called to active military duty on or after April 1, 2009, or the Participant's period of active duty begins before April 1, 2009 and continues on or after the date.

- During the period beginning on the date of the Participant's order or call to active duty and ending on the last day of the Plan Year during which the order or call occurred, the Participant submits a qualified reservist distribution election form to the Plan Administrator.

Amount of Qualified Reservist Distribution. If the above conditions are met, the Participant will receive a distribution from the **Limited Scope Health FSA** equal to his or her Contributions to the **Limited Scope Health FSA** for the Plan Year as of the date of the distribution request, minus any reimbursements received for the Plan Year as of that date.

No Reimbursement for Expenses Incurred After Distribution Request. Once a Participant requests a qualified reservist distribution, the Participant forfeits the right to receive reimbursements for Dental and Vision Expenses incurred during the period that begins on the date of the distribution request and ends on the last day of the Plan Year. The Participant may, however, continue to submit claims for Dental and Vision Expenses that were incurred before the date of the distribution request (even if the claims are submitted after the date of the qualified reservist distribution), so long as the total dollar amount of the claims does not exceed the amount of the **Limited Scope Health FSA** election for the Plan Year, minus the sum of the qualified reservist distribution and the prior **Limited Scope Health FSA** reimbursements for the Plan Year.

Tax Treatment of a Qualified Reservist Distribution. If the Participant receives a qualified reservist distribution, it will be included in his or her gross income and will be reported as wages on the Participant's Form W-2 for the year in which it is paid.

E.11 Named Fiduciary

The Plan Administrator is the Named Fiduciary for the **Limited Scope Health FSA**.

E.12 Coordination of Benefits

Limited Scope Health FSAs are intended to pay Benefits solely for Dental and Vision Expenses not previously reimbursed or reimbursable elsewhere. Accordingly, the **Limited Scope Health FSA** shall not be considered a group health plan for coordination of benefits purposes, and the **Limited Scope Health FSA** shall not be taken into account when determining benefits payable under any other plan.

*AUTHORITY: section 33.103, RSMo Supp. [2010] **2012**. Original rule filed March 15, 1988, effective June 1, 1988. For intervening history, please consult the **Code of State Regulations**. Emergency amendment filed Dec. 3, 2012, effective Jan. 1, 2013, expires June 29, 2013. Amended: Filed Dec. 3, 2012.*

PUBLIC COST: This proposed amendment may cost the state up to an average of two hundred eighty-eight thousand three hundred ninety-seven dollars ($288,397) per year in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars ($500) in the aggregate.

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with Office of Administration, Attn: Nikki Loethen, PO Box 809, Jefferson City, MO 65109. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.*

FISCAL NOTE
PUBLIC COST

I. **Department Title:** Office of Administration
Division Title: Commissioner's Office
Chapter Title: Cafeteria Plan

Rule Number and Name:	1 CSR 10-15.010 Cafeteria Plan
Type of Rulemaking:	Amendment

II. SUMMARY OF FISCAL IMPACT

Affected Agency or Political Subdivision	Estimated Cost of Compliance in the Aggregate
general revenue	an average of $288,397 per year or less

III. WORKSHEET

Please see explanation below.

IV. ASSUMPTIONS

The cafeteria plan allows employees of the state and other participating state entities to set aside a portion of their salary to be used to pay for certain qualifying medical and dependent care expenses. Under the current plan regulation, in order to receive reimbursement for those expenses, employees must incur them by December 31 of the plan year. Expenses not incurred by then and timely submitted for reimbursement are forfeited to general revenue.

This amendment creates a grace period allowing employees to incur expenses through March 15 of the following plan year and still obtain reimbursement for timely-submitted claims. This grace period may reduce forfeitures of employee funds and may therefore result in a reduction to general revenue.

It is difficult to estimate the potential reduction to general revenue. During calendar years 2008-2011, an average of 65,383 state and state entity employees participated in the plan. During that period, an average of $288,397 per year was forfeited to general revenue. The assumption is that this amendment will reduce that average.

Title 2—DEPARTMENT OF AGRICULTURE
Division 30—Animal Health
Chapter 10—Food Safety and Meat Inspection

PROPOSED AMENDMENT

2 CSR 30-10.010 Inspection of Meat and Poultry. The department is amending section (2).

*PURPOSE: This amendment ensures that the current rule language clearly includes the most recent publication date of Title 9, the **Code of Federal Regulations** published January 1 of each calendar year for the Missouri Meat and Poultry Inspection Program to be in compliance with federal regulations and maintain "equal to" status as determined by the United States Department of Agriculture/Food Safety and Inspection Service.*

(2) The standards used to inspect Missouri meat and poultry slaughter and processing shall be those shown in Part 300 to end of Title 9, the *Code of Federal Regulations [published annually in January]* **(January 2013)**, herein incorporated by reference and made a part of this rule as published by the United States Superintendent of Documents, 732 N Capitol Street NW, Washington, DC 20402-0001, phone: toll-free (866) 512-1800*[;]***,** DC area (202) 512-1800, website http://bookstore.gpo.gov. This rule does not incorporate any subsequent amendments or additions.

*AUTHORITY: section 265.020, RSMo 2000. Original rule filed Sept. 14, 2000, effective March 30, 2001. For intervening history, please consult the **Code of State Regulations**. Emergency amendment filed Dec. 3, 2012, effective Jan. 1, 2013, expires June 29, 2013. Amended: Filed Dec. 3, 2012.*

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars ($500) in the aggregate.

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri Department of Agriculture, Linda Hickam, State Veterinarian, PO Box 630, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.*

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 240—Public Service Commission
Chapter 40—Gas Utilities and Gas Safety Standards

PROPOSED AMENDMENT

4 CSR 240-40.020 Incident, Annual, and Safety-Related Condition Reporting Requirements. The commission is amending sections (1)–(7) and (9)–(13).

PURPOSE: This amendment proposes to amend the rule to conform to amendments of 49 CFR part 191, to revise several section titles, to incorporate by reference current versions of report forms, and to remove references to LNG facilities.

(1) Scope. (191.1)

(B) This rule does not apply to gathering of gas *[on private property outside of]*—

1. *[An area within the limits of any incorporated or unincorporated city, town or village]* **Through a pipeline that operates at less than zero (0) pound per square inch gauge (psig) (0 kPa)**; or

2. *[Any designated residential or commercial area such as a subdivision, business or shopping center or community development]* **Through a pipeline that is not a regulated onshore gathering line (as determined in 4 CSR 240-40.030(1)(E) (192.8))**.

(2) Definitions. (191.3) As used in this rule and in the PHMSA Forms referenced in this rule—

(B) Commission means the Public Service Commission*[,]***.** Designated commission personnel means the Pipeline Safety Program Manager at the address contained in *[section (5) (191.7)]* **subsection (5)(E)** for required correspondence and means the list of staff personnel supplied to operators for required telephonic notices;

(C) Federal incident means any of the following events:

1. An event that involves a release of gas from a pipeline *[or of liquefied natural gas (LNG) or gas from an LNG facility and—]* **and that results in one (1) or more of the following consequences:**

A. A death or personal injury necessitating inpatient hospitalization; *[or]*

B. Estimated property damage*[, including cost of gas lost, of the operator or others, or both,]* of fifty thousand dollars ($50,000) or more**, including loss to the operator and others, or both, but excluding the cost of gas lost**;

C. Unintentional estimated gas loss of three (3) million cubic feet or more;

[2. An event that results in an emergency shutdown of an LNG facility; or]

*[3.]***2.** An event that is significant, in the judgment of the operator, even though it did not meet the criteria of paragraph*[s]* (2)(C)1. *[or 2.]*;

(E) LNG *[facility]* means *[a]* liquefied natural gas *[facility as defined in 193.2007 of 49 CFR part 193]*;

(3) *[Telephonic]* **Immediate** Notice of Federal Incidents. (191.5)

(B) Each notice required by subsection (3)(A) *[shall]* **must** be made **to the National Response Center either** by telephone to **(**800**)***[-]* 424-8802 **or electronically at www.nrc.uscg.mil** and *[shall]* **must** include the following information:

1. Names of operator and person making report and their telephone numbers;
2. Location of the incident;
3. Time of the incident;
4. Number of fatalities and personal injuries, if any; and
5. All other significant facts known by the operator that are relevant to the cause of the incident or extent of the damages.

(4) *[Missouri Reporting Requirements]* **Immediate Notice of Missouri Incidents**.

(A) Within two (2) hours following discovery by the operator, or as soon thereafter as practicable if emergency efforts to protect life and property would be hindered, each gas operator *[shall]* **must** notify designated commission personnel by telephone of the following events within areas served by the operator:

1. An event that involves a release of gas involving the operator's actions or *[facilities]* **pipeline system**, or where there is a suspicion by the operator that the event may involve a release of gas involving the operator's actions or *[facilities]* **pipeline system**, and *[involves]* **results in one (1) or more of the following consequences—**

A. A death;

B. A personal injury involving medical care administered in an emergency room or health care facility, whether inpatient or outpatient, beyond initial treatment and prompt release after evaluation by a health care professional; or

C. Estimated property damage **of ten thousand dollars ($10,000) or more**, including *[cost of gas lost,]* **loss** to the gas operator or others, or both, *[of ten thousand dollars ($10,000) or more]* **and including the cost of gas lost**; or

2. An event that is significant, in the judgement of the operator, even though it did not meet the criteria of paragraph (4)(A)1.

(B) Exceeding the two- (2-)*[-]* hour notification time period in **subsection** (4)(A) requires submission of a written explanation of reasons with the operator's incident report **when submitting the report to designated commission personnel. See section (5) for report submission requirements**.

[(C) Within thirty (30) days of a telephone notification made under subsection (4)(A) each gas operator shall submit U.S. Department of Transportation Form PHMSA F 7100.1 or PHMSA F 7100.2, as applicable, to designated commission personnel. These two (2) incident report forms for gas distribution systems (PHMSA F 7100.1, revised March 2004) and gas transmission and gathering systems (PHMSA F 7100.2, revised January 2002) are incorporated by reference. The forms are published by the U.S. Department of Transportation Office of Pipeline Safety, Room 2103, 400 7th St. SW, Washington DC 20590. The forms are available at http://ops.dot.gov/library/forms/forms.htm or upon request from the pipeline safety program manager at the address given in section (5). The PHMSA F 7100.1 form does not include any amendments or additions to the March 2004 version. The PHMSA F 7100.2 form does not include any amendments or additions to the January 2002 version. An incident report is required when an event causes the criteria listed in paragraphs (4)(A)1. or 2. to be met. Additional information required in subsections (6)(B) and (9)(B) (191.9[b] and 191.15[b]) shall apply.]

[(D) Federal incident and annual reports required by this rule shall be submitted in duplicate to designated commission personnel as follows:

1. Federal incident reports required by section(s) (6) or (9), or both, (191.9 or 191.15, or both) shall be submitted as soon as practicable but not more than thirty (30) days after detection of the incident. Upon receipt and processing of these reports, the designated commission personnel, within ten (10) days, shall transmit one (1) copy to the information resources manager at PHMSA; and

2. Annual reports required by section(s) (7) or (10), or both, (191.11 or 191.17, or both) shall be submitted no later than February 28 of each year. Upon receipt and processing these reports, the designated commission personnel shall transmit one (1) copy by March 15 to the information resources manager at PHMSA.]

[(E) Safety-related condition reports required by section (12) (191.23) shall be submitted concurrently to the Associate Administrator, Office of Pipeline Safety at PHMSA and to designated commission personnel. A safety-related condition report can be submitted to the addresses provided in section (5) (191.7) or by telefacsimile (fax) as provided for in section (13).]

(5) *[Addressee for Written Reports]* **Report Submission Requirements**. (191.7) *[Incident, annual, and safety-related condition reports shall be submitted to designated commission personnel as required by section (4). The address for the designated commission personnel is Pipeline Safety Program Manager, Missouri Public Service Commission, P.O. Box 360, Jefferson City, MO 65102. As required by subsection (4)(E), safety-related condition reports must be submitted concurrently to the Associate Administrator, Office of Pipeline Safety at PHSMA by mail or by telefacsimile (fax). If submitted by mail, the address is Information Resources Manager, Office of Pipeline Safety, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, Room 2103, 400 7th St. SW, Washington, DC 20590. Safety-related condition reports may be submitted by fax as provided for in section (13).]*

(A) Reports to PHMSA.

1. An operator must submit each report required by sections (6)–(11) electronically to the Pipeline and Hazardous Materials Safety Administration at http://opsweb.phmsa.dot.gov unless an alternative reporting method is authorized in accordance with subsection (5)(D).

2. A copy of each online submission to PHMSA must also be submitted concurrently to designated commission personnel. The copy submitted to designated commission personnel must be clearly marked to indicate the date of the online submission to PHMSA.

(B) Missouri Incident Reports.

1. This subsection applies to events that meet the criteria in subsection (4)(A) but are not a federal incident reported under subsection (5)(A). Within thirty (30) days of a telephone notification made under subsection (4)(A), each gas operator must submit U.S. Department of Transportation Form PHMSA F 7100.1 or PHMSA F 7100.2, as applicable, to designated commission personnel. Additional information required in subsections (6)(B) and (9)(B) for federal incidents is also required for these events.

2. The incident report forms for gas distribution systems (PHMSA F 7100.1, revised June 2011) and gas transmission and gathering pipeline systems (PHMSA F 7100.2, revised June 2011) are incorporated by reference. The forms are published by the U.S. Department of Transportation Office of Pipeline Safety, PHP-10, 1200 New Jersey Avenue SE, Washington, DC 20590-0001. The forms are available at www.phmsa.dot.gov/pipeline/library/forms or upon request from the pipeline safety program manager at the address given in subsection (5)(E). The PHMSA F 7100.1 form does not include any amendments or additions to the June 2011 version. The PHMSA F 7100.2 form does not include any amendments or additions to the June 2011 version.

(C) Safety-related Conditions. An operator must submit concurrently to PHMSA and designated commission personnel a safety-related condition report required by section (12) (191.23). A safety-related condition report can be submitted to the addresses provided in subsections (5)(D)–(E) or by telefacsimile (fax) as provided for in section (13).

(D) Alternative Reporting Method.

1. If electronic reporting imposes an undue burden and hardship, an operator may submit a written request for an alternative reporting method to the Information Resources Manager, Office of Pipeline Safety, Pipeline and Hazardous Materials Safety Administration, PHP-10, 1200 New Jersey Avenue SE, Washington DC 20590-0001. The request must describe the undue burden and hardship. PHMSA will review the request and may authorize, in writing, an alternative reporting method. An authorization will state the period for which it is valid, which may be indefinite. An operator must contact PHMSA at (202) 366-8075, or electronically to informationresourcesmanager@dot.gov or make arrangements for submitting a report that is due after a request for alternative reporting is submitted, but before an authorization or denial is received.

2. A copy of each report using an alternate reporting method must also be submitted concurrently to designated commission personnel. The copy submitted to designated commission personnel must be clearly marked to indicate the date of submission to PHMSA.

(E) Address for Designated Commission Personnel. The address for the designated commission personnel is Pipeline Safety Program Manager, Missouri Public Service Commission, PO Box 360, Jefferson City, MO 65102. The email address for designated commission personnel is PipelineSafetyProgramManager@psc.mo.gov.

(6) Distribution System—Federal Incident Report. (191.9)

(A) Except as provided in subsection (6)(C), each operator of a distribution pipeline system *[shall]* **must** submit U.S. Department of Transportation Form PHMSA F 7100.1 *[to designated commission personnel in accordance with subsection (4)(D) following each]* **as soon as practicable but not more than thirty (30) days after detection of an** incident required to be reported under section (3) **(191.5)**. **See the report submission requirements in subsection (5)(A).** The incident report form (revised *[March 2004]* **June 2011**) is incorporated by reference and is published by U.S. Department of Transportation Office of Pipeline Safety, *[Room 2103, 400 7th St. SW]* **PHP-10, 1200 New Jersey Avenue SE,** Washington**,** DC 20590-**0001**. The form is available at *[http://ops.dot.gov/library/forms/forms.htm]* **www.phmsa.dot.gov/pipeline/library/forms** or upon request from the pipeline safety program manager at the address given in **sub**section (5)**(E)**. The form does not include any amendments or additions to the *[March 2004]* **June 2011** version.

(C) The incident report required by this section need not be submitted with respect to master meter systems *[or LNG facilities]*.

(7) Distribution *[s]***S**ystem—Annual Report **and Mechanical Fitting Failure Reports**. *[(191.11)]*

(A) **Annual Report. (191.11)**

1. Except as provided in *[subsection (7)(B)]* **paragraph (7)(A)3.**, each operator of a distribution pipeline system *[shall]* **must** submit an annual report for that system on U.S. Department of Transportation Form PHMSA F 7100.1-1. This report must be submitted each *[year as required by section (4)]* **year, not later than March 15,** for the preceding calendar year. **See the report submission requirements in subsection (5)(A).**

2. The annual report form (revised *[December 2005]* **January 2011**) is incorporated by reference and is published by U.S. Department of Transportation Office of Pipeline Safety, *[Room 2103, 400 7th St. SW]* **PHP-10, 1200 New Jersey Avenue SE**, Washington**,** DC 20590-**0001**. The form is available at *[http://ops.dot.gov/library/forms/forms.htm]* **www.phmsa.dot.gov/pipeline/library/forms** or upon request from the pipeline safety program manager at the address given in **sub**section (5)**(E)**. The form does not include any amendments or additions to the *[December 2005]* **January 2011** version.

3. The annual report requirement in this subsection does not apply to a master meter system or to a petroleum gas system which serves fewer than one hundred (100) customers from a single source.

[(B) The annual report required by this section need not be submitted with respect to—

1. Petroleum gas systems which serve fewer than one hundred (100) customers from a single source;

2. Master meter systems; or

3. LNG facilities.]

(B) Mechanical Fitting Failure Reports. (191.12)

1. Each mechanical fitting failure, as required by 4 CSR 240-40.030(17)(E) (192.1009), must be submitted on a Mechanical Fitting Failure Report Form (U.S. Department of Transportation Form PHMSA F 7100.1–2). An operator must submit a mechanical fitting failure report for each mechanical fitting failure that occurs within a calendar year not later than March 15 of the following year (for example, all mechanical failure reports for calendar year 2012 must be submitted no later than March 15, 2013). Alternatively, an operator may elect to submit its reports throughout the year. In addition, an operator must also report this information to designated commission personnel.

2. The Mechanical Fitting Failure Report Form (January 2011) is incorporated by reference and is published by the U.S. Department of Transportation Office of Pipeline Safety, PHP-10, 1200 New Jersey Avenue SE, Washington, DC 20590-0001. The form is available at www.phmsa.dot.gov/pipeline/library/forms or upon request from the pipeline safety program manager at the address given in subsection (5)(E). The form does not include any amendments or additions to the January 2011 version.

(9) Transmission and Gathering Systems—Federal Incident Report. (191.15)

(A) *[Except as provided in subsection (9)(C), each]* **Transmission and Gathering. Each** operator of a transmission or a gathering pipeline system *[shall]* **must** submit U.S. Department of Transportation Form PHMSA F 7100.2 *[to designated commission personnel in accordance with subsection (4)(D) following each]* **as soon as practicable but not more than thirty (30) days after detection of an** incident required to be reported under section (3) **(191.5)**. **See the report submission requirements in subsection (5)(A).** The incident report form (revised *[January 2002]* **June 2011**) is incorporated by reference and is published by U.S. Department of Transportation Office of Pipeline Safety, *[Room 2103, 400 7th St. SW]* **PHP-10, 1200 New Jersey Avenue SE**, Washington**,** DC 20590-**0001**. The form is available at *[http://ops.dot.gov/library/forms/forms.htm]* **www.phmsa.dot.gov/pipeline/library/forms** or upon request from the pipeline safety program manager at the address given in **sub**section (5)**(E)**. The form does not include any amendments or additions to the *[January 2002]* **June 2011** version.

(B) **Supplemental Report.** When additional related information is obtained after a report is submitted under subsection (9)(A), the operator *[shall]* **must** make a supplemental report, as soon as practicable, with a clear reference by date *[and subject]* to the original report.

[(C) The incident report required by subsection (9)(A) need not be submitted with respect to LNG facilities.]

(10) Transmission and Gathering Systems—Annual Report. (191.17)

(A) *[Except as provided in subsection (10)(B), each]* **Transmission and gathering. Each** operator of a transmission or a gathering pipeline system *[shall]* **must** submit an annual report for that system on U.S. Department of Transportation Form PHMSA F 7100.2-1. *[As required by section (4), this]* **This** report must be submitted each year**, not later than March 15,** for the preceding calendar year. **See the report submission requirements in subsection (5)(A).** The annual report form (revised *[December 2005]* **June 2011**) is incorporated by reference and is published by U.S. Department of Transportation Office of Pipeline Safety, *[Room 2103, 400 7th St. SW]* **PHP-10, 1200 New Jersey Avenue SE**, Washington**,** DC 20590-**0001**. The form is available at *[http://ops.dot.gov/library/forms/forms.htm]* **www.phmsa.dot.gov/pipeline/library/forms** or upon request from the pipeline safety program manager at the address given in **sub**section (5)**(E)**. The form does not include any amendments or additions to the *[December 2005]* **June 2011** version.

(B) *[The annual report required by subsection (10)(A) need not be submitted with respect to LNG facilities.]* ***(Reserved)***

(11) *[Report Forms. (191.19)]* **National Registry of Pipeline and LNG Operators. (191.22)** *[Copies of the prescribed report forms are available without charge upon request from the pipeline safety program manager at the address given in section (5). Additional copies in this prescribed format may be reproduced and used if in the same size and kind of paper. In addition, the information required by these forms may be submitted by any other means that is acceptable to the administrator or pipeline safety program manager.]*

(A) OPID Request.

1. Effective January 1, 2012, each operator of a gas pipeline or gas pipeline facility must obtain from PHMSA an Operator Identification Number (OPID). An OPID is assigned to an operator for the pipeline or pipeline system for which the operator has

primary responsibility. To obtain an OPID, an operator must complete an OPID Assignment Request (U.S. Department of Transportation Form PHMSA F 1000.1) through the National Registry of Pipeline and LNG Operators at http://opsweb.phmsa.dot.gov unless an alternative reporting method is authorized in accordance with subsection (5)(D). A copy of each submission to PHMSA must also be submitted concurrently to designated commission personnel—see addresses in subsection (5)(E).

2. The OPID Assignment Request form (December 2011) is incorporated by reference and is published by U.S. Department of Transportation Office of Pipeline Safety, PHP-10, 1200 New Jersey Avenue SE, Washington, DC 20590-0001. The form is available at www.phmsa.dot.gov/pipeline/library/forms or upon request from the Pipeline Safety Program Manager at the address given in subsection (5)(E). The form does not include any amendments or additions to the December 2011 version.

(B) OPID Validation. An operator who has already been assigned one (1) or more OPID by January 1, 2011, must validate the information associated with each OPID through the National Registry of Pipeline and LNG Operators at http://opsweb.phmsa.dot.gov, and correct that information as necessary, no later than September 30, 2012 (PHMSA Advisory Bulletin ADB-2012-04 extended the deadline from June 30, 2012, to September 30, 2012).

(C) Changes. Each operator of a gas pipeline or gas pipeline facility must notify PHMSA electronically through the National Registry of Pipeline and LNG Operators at http://opsweb.phmsa.dot.gov of certain events. A copy of each online notification must also be submitted concurrently to designated commission personnel—see addresses in subsection (5)(E).

1. An operator must notify PHMSA of any of the following events not later than sixty (60) days before the event occurs:

A. Construction or any planned rehabilitation, replacement, modification, upgrade, uprate, or update of a facility, other than a section of line pipe, that costs ten (10) million dollars or more. If sixty (60) day notice is not feasible because of an emergency, an operator must notify PHMSA as soon as practicable; or

B. Construction of ten (10) or more miles of a new pipeline.

2. An operator must notify PHMSA of any of the following events not later than sixty (60) days after the event occurs:

A. A change in the primary entity responsible (i.e., with an assigned OPID) for managing or administering a safety program required by this rule covering pipeline facilities operated under multiple OPIDs;

B. A change in the name of the operator;

C. A change in the entity (e.g., company, municipality) responsible for an existing pipeline, pipeline segment, or pipeline facility; or

D. The acquisition or divestiture of fifty (50) or more miles of a pipeline or pipeline system subject to 4 CSR 240-40.030.

(D) Reporting. An operator must use the OPID issued by PHMSA for all reporting requirements covered under 4 CSR 240-40.020 and 40.030, and for submissions to the National Pipeline Mapping System.

(12) Reporting Safety-Related Conditions. (191.23)

(A) Except as provided in subsection (12)(B), each operator *[shall]* **must** report in accordance with section (13) (191.25) the existence of any of the following safety-related conditions involving facilities in service:

1. In the case of the pipeline *[(other than an LNG facility)]* that operates at a hoop stress of twenty percent (20%) or more of its specified minimum yield strength, general corrosion that has reduced the wall thickness to less than that required for the maximum allowable operating pressure and localized corrosion pitting to a degree where leakage might result;

2. Unintended movement or abnormal loading by environmental causes, for instance, an earthquake, landslide or flood, that impairs the serviceability of a pipeline *[or the structural integrity or reliability of an LNG facility that contains, controls or processes gas or LNG]*;

[3. Any crack or other material defect that impairs the structural integrity or reliability of an LNG facility that contains, controls or processes gas or LNG;]

*[4.]***3.** Any material defect or physical damage that impairs the serviceability of a pipeline that operates at a hoop stress of twenty percent (20%) or more of its specified minimum yield strength;

*[5.]***4.** Any malfunction or operating error that causes the pressure of a pipeline *[or LNG facility that contains or processes gas or LNG]* to rise above its maximum allowable operating pressure *[(or working pressure for LNG facilities)]* plus the buildup allowed for operation of pressure limiting or control devices;

*[6.]***5.** A leak in a pipeline *[or LNG facility that contains or processes gas or LNG]* that constitutes an emergency; **and**

[7. Inner tank leakage, ineffective insulation or frost heave that impairs the structural integrity of an LNG storage tank; and]

*[8.]***6.** Any safety-related condition that could lead to an imminent hazard and causes (either directly or indirectly by remedial action of the operator), for purposes other than abandonment, a twenty percent (20%) or more reduction in operating pressure or shutdown of operation of a pipeline *[or an LNG facility that contains or processes gas or LNG]*.

(B) A report is not required for any safety-related condition that—

1. Exists on a master meter system or a customer-owned service line;

2. Is an incident or results in an incident before the deadline for filing the safety-related condition report;

3. Exists on a pipeline *[(other than an LNG facility)]* that is more than two hundred twenty (220) yards (**two hundred (**200**)** meters) from any building intended for human occupancy or outdoor place of assembly, except that reports are required for conditions within the right-of-way of an active railroad, paved road, street**,** or highway; or

4. Is corrected by repair or replacement in accordance with applicable safety standards before the deadline for filing the safety-related condition report, except that reports are required for conditions under paragraph (12)(A)1. other than localized corrosion pitting on an effectively coated and cathodically protected pipeline.

(13) Filing Safety-Related Condition Reports. (191.25)

(A) Each report of a safety-related condition under subsection (12)(A) must be filed (received by the Associate Administrator, Office of Pipeline Safety at PHMSA and designated commission *[personnel as required by subsection (4)(E)]]* **personnel**) in writing within five (5) working days (not including Saturday, Sunday, or federal holidays) after the day a representative of the operator first determines that the condition exists, but not later than ten (10) working days after the day a representative of the operator discovers the possibility of a condition. Separate conditions may be described in a single report if they are closely related. **See the report submission requirements in subsection (5)(C).** To file a report by telefacsimile (fax), dial (202) 366-7128 for the Associate Administrator, Office of Pipeline Safety and (573) 522-1946 for designated commission personnel.

(B) The report must be titled Safety-Related Condition Report and provide the following information:

1. Name and principal address of the operator;

2. Date of report;

3. Name, job title**,** and business telephone number of the person submitting the report;

4. Name, job title**,** and business telephone number of the person who determined that the condition exists;

5. Date the condition was discovered and date the condition was first determined to exist;

6. Location of the condition, with reference to the state (and town, city, or county), and as appropriate, nearest street address, survey station number, milepost, landmark**,** or name of pipeline;

7. Description of the condition, including circumstances leading to its discovery, any significant effects of the condition on safety, and the name of the commodity transported or stored; and

8. The corrective action taken (including reduction of pressure or shutdown) before the report is submitted and the planned follow-up or future corrective action, including the anticipated schedule for starting and concluding such action.

AUTHORITY: sections 386.250, 386.310, and 393.140, RSMo 2000. Original rule filed Feb. 5, 1970, effective Feb. 26, 1970. For intervening history, please consult the ***Code of State Regulations****. Amended: Filed Nov. 29, 2012.*

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars ($500) in the aggregate.

NOTICE TO SUBMIT COMMENTS AND NOTICE OF PUBLIC HEARING: Anyone may file comments in support of or in opposition to this proposed amendment with the Missouri Public Service Commission, Steven C. Reed, Secretary of the Commission, PO Box 360, Jefferson City, MO 65102. To be considered, comments must be received at the commission's offices on or before February 1, 2013, and should include a reference to Commission Case No. GX-2013-0092. Comments may also be submitted via a filing using the commission's electronic filing and information system at http://www.psc.mo.gov/efis.asp. A public hearing regarding this proposed amendment is scheduled for February 5, 2013, at 10:00 a.m., in Room 305 of the Governor Office Building, 200 Madison St., Jefferson City, Missouri. Interested persons may appear at this hearing to submit additional comments and/or testimony in support of or in opposition to this proposed amendment, and may be asked to respond to commission questions.

SPECIAL NEEDS: Any persons with special needs as addressed by the Americans with Disabilities Act should contact the Missouri Public Service Commission at least ten (10) days prior to the hearing at one (1) of the following numbers: Consumer Services Hotline 1 (800) 392-4211 (voice) or Relay Missouri at 711.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 240—Public Service Commission
Chapter 40—Gas Utilities and Gas Safety Standards

PROPOSED AMENDMENT

4 CSR 240-40.030 Safety Standards—Transportation of Gas by Pipeline. The commission is amending sections (1), (2), (3), (4), (6), (8), (9), (12), (13), and (16); adding a new section (17); amending renumbered section (18); and amending Appendices B and E.

PURPOSE: This amendment proposes to amend the rule to address amendments of 49 CFR part 192 promulgated between October 2007 and May 2012, to clarify the rule, and to make editorial changes.

(1) General.

(B) Definitions. (192.3) As used in this rule—

1. Abandoned means permanently removed from service;

2. Active corrosion means continuing corrosion that, unless controlled, could result in a condition that is detrimental to public safety;

*[2.]***3.** Administrator means the Administrator of the Pipeline and Hazardous Materials Safety Administration of the United States Department of Transportation to whom authority in the matters of pipeline safety have been delegated by the Secretary of the United States Department of Transportation, or his or her delegate;

*[3.]***4.** Building means any structure that is regularly or periodically occupied by people;

*[4.]***5.** Commission means the Missouri Public Service Commission;

*[5.]***6.** Customer meter means the meter that measures the transfer of gas from an operator to a consumer;

*[6.]***7.** Designated commission personnel means the pipeline safety program manager at the address contained in 4 CSR 240-40.020(5)**(E)** for required correspondence;

*[7.]***8.** Distribution line means a pipeline other than a gathering or transmission line;

9. Electrical survey means a series of closely spaced pipe-to-soil readings over pipelines which are subsequently analyzed to identify locations where a corrosive current is leaving the pipeline, except that other indirect examination tools/methods can be used for an electrical survey included in the federal regulations in 49 CFR part 192, subpart O and appendix E (incorporated by reference in section (16));

*[8.]***10.** Feeder line means a distribution line that has a maximum allowable operating pressure (MAOP) greater than 100 psi (689 kPa) gauge that produces hoop stresses less than twenty percent (20%) of specified minimum yield strength (SMYS);

*[9.]***11.** Follow-up inspection means an inspection performed after a repair procedure has been completed in order to determine the effectiveness of the repair and to ensure that all hazardous leaks in the area are corrected;

*[10.]***12.** Fuel line means the customer-owned gas piping downstream from the outlet of the customer meter or operator-owned pipeline, whichever is farther downstream;

*[11.]***13.** Gas means natural gas, flammable gas, manufactured gas, or gas which is toxic or corrosive;

*[12.]***14.** Gathering line means a pipeline that transports gas from a current production facility to a transmission line or main;

*[13.]***15.** High-pressure distribution system means a distribution system in which the gas pressure in the main is higher than an equivalent to fourteen inches (14") water column;

*[14.]***16.** Hoop stress means the stress in a pipe wall acting circumferentially in a plane perpendicular to the longitudinal axis of the pipe produced by the pressure in the pipe;

*[15.]***17.** Listed specification means a specification listed in subsection I. of Appendix B, which is included herein (at the end of this rule);

*[16.]***18.** Low-pressure distribution system means a distribution system in which the gas pressure in the main is less than or equal to an equivalent of fourteen inches (14") water column;

*[17.]***19.** Main means a distribution line that serves as a common source of supply for more than one (1) service line;

*[18.]***20.** Maximum actual operating pressure means the maximum pressure that occurs during normal operations over a period of one (1) year;

*[19.]***21.** Maximum allowable operating pressure (MAOP) means the maximum pressure at which a pipeline or segment of a pipeline may be operated under this rule;

*[20.]***22.** Municipality means a city, village**,** or town;

*[21.]***23.** Operator means a person who engages in the transportation of gas;

*[22.]***24.** Person means any individual, firm, joint venture, partnership, corporation, association, county, state, municipality, political

subdivision, cooperative association**,** or joint stock association, and including any trustee, receiver, assignee**,** or personal representative of them;

*[23.]***25.** Petroleum gas means propane, propylene, butane (normal butane or isobutanes), and butylene (including isomers), or mixtures composed predominantly of these gases, having a vapor pressure not exceeding 208 psi (1434 kPa) *[guage]* **gauge** at 100 °F (38 °C);

26. PHMSA means the Pipeline and Hazardous Materials Safety Administration of the United States Department of Transportation;

*[24.]***27.** Pipe means any pipe or tubing used in the transportation of gas, including pipe-type holders;

*[25.]***28.** Pipeline means all parts of those physical facilities through which gas moves in transportation, including pipe, valves, and other appurtenances attached to pipe, compressor units, metering stations, regulator stations, delivery stations, holders**,** and fabricated assemblies;

29. Pipeline environment includes soil resistivity (high or low), soil moisture (wet or dry), soil contaminants that may promote corrosive activity, and other known conditions that could affect the probability of active corrosion;

*[26.]***30.** Pipeline facility means new and existing *[pipeline]* **pipelines**, rights-of-way, and any equipment, facility, or building used in the transportation of gas or in the treatment of gas during the course of transportation;

*[27.]***31.** Reading means the highest sustained reading when testing in a bar hole or opening without induced ventilation;

*[28.]***32.** Service line means a distribution line that transports gas from a common source of supply to an individual customer, to two (2) adjacent or adjoining residential or small commercial customers, or to multiple residential or small commercial customers served through a meter header or manifold. A service line ends at the outlet of the customer meter or at the connection to a customer's piping, whichever is further downstream, or at the connection to customer piping if there is no meter;

*[29.]***33.** Service regulator means the device on a service line that controls the pressure of gas delivered from a higher pressure to the pressure provided to the customer. A service regulator may serve one (1) customer or multiple customers through a meter header or manifold;

*[30.]***34.** SMYS means specified minimum yield strength is—

A. For steel pipe manufactured in accordance with a listed specification, the yield strength specified as a minimum in that specification; or

B. For steel pipe manufactured in accordance with an unknown or unlisted specification, the yield strength determined in accordance with paragraph (3)(D)2. (192.107[b]);

*[31.]***35.** Sustained reading means the reading taken on a combustible gas indicator unit after adequately venting the test hole or opening;

*[32.]***36.** Transmission line means a pipeline, other than a gathering line, that—

A. Transports gas from a gathering line or storage facility to a distribution center, storage facility, or large volume customer that is not downstream from a distribution center (A large volume customer may receive similar volumes of gas as a distribution center, and includes factories, power plants, and institutional users of gas);

B. Operates at a hoop stress of twenty percent (20%) or more of SMYS; or

C. Transports gas within a storage field;

*[33.]***37.** Transportation of gas means the gathering, transmission, or distribution of gas by pipeline or the storage of gas in Missouri;

*[34.]***38.** Tunnel means a subsurface passageway large enough for a man to enter;

*[35.]***39.** Vault or manhole means a subsurface structure that a man can enter; and

*[36.]***40.** Yard line means an underground fuel line that transports gas from the service line to the customer's building. If multiple buildings are being served, building shall mean the building nearest to the connection to the service line. For purposes of this definition, if aboveground fuel line piping at the meter location is located within five feet (5') of a building being served by that meter, it shall be considered to the customer's building and no yard line exists. At meter locations where aboveground fuel line piping is located greater than five feet (5') from the building(s) being served, the underground fuel line from the meter to the entrance into the nearest building served by that meter shall be considered the yard line and any other lines are not considered yard lines.

(D) Incorporation By Reference of the Federal Regulation at 49 CFR 192.7. (192.7)

1. As set forth in the *Code of Federal Regulations* (CFR) dated October 1, *[2006]* **2011**, *[and the subsequent amendment 192-103 (published in Federal Register on February 1, 2007, page 72 FR 4655),]* the federal regulation at 49 CFR 192.7 is incorporated by reference and made a part of this rule. This rule does not incorporate any subsequent amendments to 49 CFR 192.7.

2. The *Code of Federal Regulations* and the *Federal Register* are published by the Office of the Federal Register, National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740-6001. The October 1, *[2006]* **2011,** version of 49 CFR part 192 is available at *[www.access.gpo.gov/nara/cfr/cfr-table-search.html]* **www.gpo.gov/fdsys/search/showcitation.action**. *[The Federal Register publication on page 72 FR 4655 is available at www.gpoaccess.gov/fr/advanced.html.]*

3. The regulation at 49 CFR 192.7 provides a listing of the documents that are incorporated by reference partly or wholly in 49 CFR part 192, which is the federal counterpart and foundation for this rule. All incorporated materials are available for inspection in the *[U.S. Department of Transportation –]* **Office of Pipeline Safety,** Pipeline and Hazardous Materials Safety Administration, *[400 7th St. SW]* **1200 New Jersey Avenue SE**, Washington, DC **20590-0001**, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call **(**202**)***[–]* 741-6030 or **(**866**)***[-]* 272-6272. In addition, the incorporated materials are available from the respective organizations listed in 49 CFR 192.7.

4. Federal amendment 192-94 (published in *Federal Register* on June 14, 2004, page 69 FR 32886) moved the listing of incorporated documents to 49 CFR 192.7 from 49 CFR part 192 – Appendix A, which is now "Reserved." This listing of documents was in Appendix A to this rule prior to the *[2007]* **2008** amendment of this rule. As of the *[2007]* **2008** amendment, Appendix A to this rule is also "Reserved" and included herein.

(J) Filing of Required Plans, Procedures**,** and Programs. Each operator shall submit to designated commission personnel all plans, procedures**,** and programs required by this rule (to include welding and joining procedures, construction standards, **control room management procedures,** corrosion control procedures, damage prevention program, **distribution integrity management plan,** emergency procedures, public education program, operator qualification program, replacement programs, transmission integrity management program, and procedural manual for operations, maintenance, and emergencies). In addition, each change must be submitted to designated commission personnel within twenty (20) days after the change is made.

(2) Materials.

(E) Marking of Materials. (192.63)

1. Except as provided in paragraph (2)(E)4., each valve, fitting, length of pipe**,** and other component must be marked—

A. As prescribed in the specification or standard to which it was manufactured; however, thermoplastic fittings must be marked in accordance with ASTM D 2513**-87 (incorporated by reference in 49 CFR 192.7 and adopted in (1)(D))**; or

B. To indicate size, material, manufacturer, pressure rating, temperature rating**,** and, as appropriate, type, grade**,** and model.

2. Surfaces of pipe and components that are subject to stress from internal pressure may not be field die stamped.

3. If any item is marked by die stamping, the die must have blunt or rounded edges that will minimize stress concentrations.

4. Paragraph (2)(E)1. does not apply to items manufactured before November 12, 1970, that meet all of the following:

A. The item is identifiable as to type, manufacturer**,** and model; and

B. Specifications or standards giving pressure, temperature**,** and other appropriate criteria for the use of items are readily available.

(F) Transportation of Pipe. (192.65)

1. Railroad. In a pipeline to be operated at a hoop stress of twenty percent (20%) or more of SMYS, an operator may not use pipe having an outer diameter to wall thickness ratio of seventy to one (70:1) or more that is transported by railroad unless—

*[1.]***A.** The transportation is performed in accordance with API *[RP5L1]* **Recommended Practice 5L1 (incorporated by reference in 49 CFR 192.7 and adopted in subsection (1)(D))**; and

*[2.]***B.** In the case of pipe transported before November 12, 1970, the pipe is tested in accordance with section (10) to at least one and one-fourth (1.25) times the maximum allowable operating pressure if it is to be installed in a Class 1 location and to at least one and one-half (*[1 1/2]* **1.5**) times the maximum allowable operating pressure if it is to be installed in a Class 2, 3**,** or 4 location. Notwithstanding any shorter time period permitted under section (10), the test pressure must be maintained for at least eight (8) hours.

2. Ship or barge. In a pipeline to be operated at a hoop stress of twenty percent (20%) or more of SMYS, an operator may not use pipe having an outer diameter to wall thickness ratio of seventy to one (70:1) or more that is transported by ship or barge on both inland and marine waterways unless the transportation is performed in accordance with API Recommended Practice 5LW (incorporated by reference in 49 CFR 192.7 and adopted in subsection (1)(D)).

(3) Pipe Design.

(I) Design of Plastic Pipe. (192.121) Subject to the limitations of subsection (3)(J), the design pressure for plastic pipe is determined in accordance with either of the following formulas:

$$P = 2\,S\,\frac{t}{(D-t)} \times 0.32$$

$$P = \frac{2\,S}{(SDR-1)} \times 0.32$$

where

P = Design pressure, psi (kPa) gauge;

S = For thermoplastic pipe, the hydrostatic design base (HDB) is determined in accordance with the listed specification at a temperature equal to 73 °F (23 °C), 100 °F (38 °C), 120 °F (49 °C)**,** or 140 °F (60 °C). In the absence of an HDB established at the specified temperature, the HDB of a higher temperature may be used in determining a design pressure rating at the specified temperature by arithmetic interpolation using the procedure in Part D.2. of *[PPI TR–3/2004]* **PPI TR–3/2008**, *HDB/PDB/SDB/MRS Policies* (incorporated by reference in 49 CFR 192.7 and adopted in **subsection** (1)(D));

t = Specified wall thickness, *[in (mm)]* **inches (millimeters)**;

D = Specified outside diameter, *[in (mm)]* **inches (millimeters)**; and

SDR = Standard dimension ratio, the ratio of the average specified outside diameter to the minimum specified wall thickness, corresponding to a value from a common numbering system that was derived from the American National Standards Institute preferred number series 10.

(J) Design Limitations for Plastic Pipe. (192.123)

1. The design pressure may not exceed a gauge pressure of 100 psi (689 kPa) gauge for plastic pipe used in—

A. Distribution systems; or

B. Classes 3 and 4 locations.

2. Plastic pipe may not be used where operating temperatures of the pipe will be*[:]***—**

A. Below -20 °F (-29 °C), or -40 °F (-40 °C) if all pipe and pipeline components whose operating temperature will be below -20 °F (-29 °C) have a temperature rating by the manufacturer consistent with that operating temperature; or

B. Above the *[following applicable temperatures for thermoplastic pipe, the]* temperature at which the HDB used in the design formula under subsection (3)(I) *[(192.121)]* is determined.

3. The wall thickness for thermoplastic pipe may not be less than 0.062 inches (1.57 millimeters).

4. The federal regulations at 49 CFR 192.123(e) and (f) are not adopted in this rule. (Those federal regulations permit higher design pressures for certain types of thermoplastic pipe.)

(4) Design of Pipeline Components.

(D) Valves. (192.145)

1. Except for cast iron and plastic valves, each valve must meet the minimum requirements of API 6D (incorporated by reference in 49 CFR 192.7 and adopted in (1)(D)), or to a national or international standard that provides an equivalent performance level. A valve may not be used under operating conditions that exceed the applicable pressure-temperature ratings contained in those requirements.

2. Each cast iron and plastic valve must comply with the following:

A. The valve must have a maximum service pressure rating for temperatures that equal or exceed the maximum service temperature; **and**

B. The valve must be tested as part of the manufacturing, as follows:

(I) With the valve in the fully open position, the shell must be tested with no leakage to a pressure at least one and one-half (1.5) times the maximum service rating;

(II) After the shell test, the seat must be tested to a pressure not less than one and one-half (1.5) times the maximum service pressure rating. Except for swing check valves, test pressure during the seat test must be applied successively on each side of the closed valve with the opposite side open. No visible leakage is permitted; and

(III) After the last pressure test is completed, the valve must be operated through its full travel to demonstrate freedom from interference.

3. Each valve must be able to meet the anticipated operating conditions.

4. No valve having shell **(body, bonnet, cover, and/or end flange)** components made of ductile iron may be used at pressures exceeding eighty percent (80%) of the pressure ratings for comparable steel valves at their listed temperature. However, a valve having shell components made of ductile iron may be used at pressures up to eighty percent (80%) of the pressure ratings for comparable steel valves at their listed temperature, if—

A. The temperature-adjusted service pressure does not exceed 1,000 psi (7 MPa) gauge; **and**

B. Welding is not used on any ductile iron component in the fabrication of the valve shells or their assembly*[; and]***.**

[C. No valve having pressure containing parts made of ductile iron may be used in the gas pipe components of compressor stations.]

5. No valve having shell (body, bonnet, cover, and/or end flange) components made of cast iron, malleable iron, or ductile iron may be used in the gas pipe components of compressor stations.

(AA) Design Pressure of Plastic Fittings. (192.191) Thermoplastic fittings for plastic pipe must conform to ASTM D 2513-**99 (incorporated by reference in 49 CFR 192.7 and adopted in subsection (1)(D))**.

(6) Joining of Materials Other Than by Welding.

(F) Plastic Pipe (192.281)

1. General. A plastic pipe joint that is joined by solvent cement, adhesive**,** or heat fusion may not be disturbed until it has properly set. Plastic pipe may not be joined by a threaded joint or miter joint.

2. Solvent cement joints. Each solvent cement joint on plastic pipe must comply with the following:

A. The mating surfaces of the joint must be clean, dry**,** and free of material which might be detrimental to the joint;

B. The solvent cement must conform to ASTM *[Designation]* D2513-**99 (incorporated by reference in 49 CFR 192.7 and adopted in subsection (1)(D))**; and

C. The joint may not be heated to accelerate the setting of the cement.

3. Heat-fusion joints. Each heat-fusion joint on plastic pipe must comply with the following:

A. A butt heat-fusion joint must be joined by a device that holds the heater element square to the ends of the piping, compresses the heated ends together and holds the pipe in proper alignment while the plastic hardens;

B. A socket heat-fusion joint must be joined by a device that heats the mating surfaces of the joint uniformly and simultaneously to essentially the same temperature;

C. An electrofusion joint must be joined utilizing the equipment and techniques of the fittings manufacturer or equipment and techniques shown, by testing joints to the requirements of **part** (6)(G)1.A.(III), to be at least equivalent to those of the fittings manufacturer; and

D. Heat may not be applied with a torch or other open flame.

[4. Adhesive joints. Each adhesive joint on plastic pipe must comply with the following:

A. The adhesive must conform to ASTM Designation D2517; and

B. The materials and adhesive must be compatible with each other.]

*[5.]***4.** Mechanical joints. Each compression type mechanical joint on plastic pipe must comply with the following:

A. The gasket material in the coupling must be compatible with the plastic; and

B. A rigid internal tubular stiffener, other than a split tubular stiffener, must be used in conjunction with the coupling.

(G) Plastic Pipe—Qualifying Joining Procedures. (192.283)

1. Heat fusion, solvent cement**,** and adhesive joints. Before any written procedure established under paragraph (6)(B)2. is used for making plastic pipe joints by a heat fusion, solvent cement**,** or adhesive method, the procedure must be qualified by subjecting specimen joints made according to the procedure to the following tests:

A. The burst test requirements of—

(I) In the case of thermoplastic pipe, paragraph 6.6 (Sustained Pressure Test) or paragraph 6.7 (Minimum Hydrostatic Burst Pressure) or paragraph 8.9 (Sustained Static Pressure Test) of ASTM D2513-**99** (incorporated by reference in 49 CFR 192.7 and adopted in **subsection** (1)(D));

(II) *(Reserved)*; or

(III) In the case of electrofusion fittings for polyethylene pipe and tubing, paragraph 9.1 (Minimum Hydraulic Burst Pressure Test), paragraph 9.2 (Sustained Pressure Test), paragraph 9.3 (Tensile Strength Test), or paragraph 9.4 (Joint Integrity Tests) of ASTM Designation F1055 (incorporated by reference in 49 CFR 192.7 and adopted in **subsection** (1)(D));

B. For procedures intended for lateral pipe connections, subject a specimen joint made from pipe sections joined at right angles according to the procedure to a force on the lateral pipe until failure occurs in the specimen. If failure initiates outside the joint area, the procedure qualifies for use; and

C. For procedures intended for nonlateral pipe connections, follow the tensile test requirements of ASTM D638 (incorporated by reference in 49 CFR 192.7 and adopted in **subsection** (1)(D)), except that the test may be conducted at ambient temperature and humidity. If the specimen elongates no less than twenty-five percent (25%) or failure initiates outside the joint area, the procedure qualifies for use.

2. Mechanical joints. Before any written procedure established under paragraph (6)(B)2. is used for making mechanical plastic pipe joints that are designed to withstand tensile forces, the procedure must be qualified by subjecting five (5) specimen joints made according to the procedure to the following tensile test:

A. Use an apparatus for the test as specified in ASTM D638 (except for conditioning), (incorporated by reference in 49 CFR 192.7 and adopted in **subsection** (1)(D));

B. The specimen must be of such length that the distance between the grips of the apparatus and the end of the stiffener does not affect the joint strength;

C. The speed of testing is 0.20 inches **(five millimeters** (5.0 mm)**)** per minute, plus or minus twenty-five percent (25%);

D. Pipe specimens less than four inches (4") **(one hundred two millimeters** (102 mm)**)** in diameter are qualified if the pipe yields to an elongation of no less than twenty-five percent (25%) or failure initiates outside the joint area;

E. Pipe specimens four inches (4") **(one hundred two millimeters** (102 mm)**)** and larger in diameter shall be pulled until the pipe is subjected to a tensile stress equal to or greater than the maximum thermal stress that would be produced by a temperature change of 100 °F (38 °C) or until the pipe is pulled from the fitting. If the pipe pulls from the fitting, the lowest value of the five (5) test results or the manufacturer's rating, whichever is lower, must be used in the design calculations for stress;

F. Each specimen that fails at the grips must be retested using new pipe; and

G. Results obtained pertain only to the specific outside diameter and material of the pipe tested, except that testing of a heavier wall pipe may be used to qualify pipe of the same material but with a lesser wall thickness.

3. A copy of each written procedure being used for joining plastic pipe must be available to the persons making and inspecting joints.

4. Pipe or fittings manufactured before July 1, 1980**,** may be used in accordance with procedures that the manufacturer certifies will produce a joint as strong as the pipe.

(8) Customer Meters, Service Regulators**,** and Service Lines.

(P) Excess Flow Valve *[Customer Notification]* **Installation**. (192.383)

1. Definitions for subsection (8)(P).

[A. Costs associated with installation means the costs directly connected with installing an excess flow valve, for example, costs of parts, labor, inventory and procurement. It does not include maintenance and replacement costs until such costs are incurred.]

*[B.]***A.** Replaced service line means a *[natural]* gas service line where the fitting that connects the service line to the main is replaced or the piping connected to this fitting is replaced.

[C. Service line customer means the person who pays the gas bill, or where service has not yet been established, the person requesting service.]

B. Service line serving single-family residence means a gas service line that begins at the fitting that connects the service line to the main and serves only one (1) single-family residence.

[2. Which customers must receive notification. Notification is required on each newly installed service line or replaced service line that operates continuously throughout

the year at a pressure not less than ten (10) psi (69 kPa) gauge and that serves a single residence. On these lines an operator of a natural gas distribution system must notify the service line customer once in writing.

3. What to put in the written notice.

A. An explanation for the customer that an excess flow valve (EFV) meeting the performance standards prescribed under subsection (8)(O) is available for the operator to install if the customer bears the costs associated with installation;

B. An explanation for the customer of the potential safety benefits that may be derived from installing an EFV. The explanation must include that an EFV is designed to shut off flow of natural gas automatically if the service line breaks; and

C. A description of installation, maintenance, and replacement costs. The notice must explain that if the customer requests the operator to install an EFV, the customer bears all costs associated with installation, and what those costs are. The notice must alert the customer that costs for maintaining and replacing an EFV may later be incurred, and what those costs will be, to the extent known.

4. When notification and installation must be made.

A. After February 3, 1999, an operator must notify each service line customer set forth in paragraph (8)(P)2.:

(I) On new service lines when the customer applies for service; and

(II) On replaced service lines when the operator determines the service line will be replaced.

B. If a service line customer requests installation, an operator must install the EFV at a mutually agreeable date.

5. What records are required.

A. An operator must make the following records available for inspection by designated commission personnel:

(I) A copy of the notice currently in use; and

(II) Evidence that notice has been sent to the service line customers set forth in paragraph (8)(P)2., within the previous three years.

B. (Reserved)

6. When notification is not required. The notification requirements do not apply if the operator can demonstrate—

A. That the operator will voluntarily install an excess flow valve or that the state or local jurisdiction requires installation;

B. That excess flow valves meeting the performance standards in subsection (8)(O) are not available to the operator;

C. That the operator has prior experience with contaminants in the gas stream that could interfere with the operation of an excess flow valve, cause loss of service to a residence, or interfere with necessary operation or maintenance activities, such as blowing liquids from the line; or

D. That an emergency or short time notice replacement situation made it impractical for the operator to notify a service line customer before replacing a service line. Examples of these situations would be where an operator has to replace a service line quickly because of—

(I) Third party excavation damage;

(II) Class 1 leaks as defined in the paragraph (14)(C)1.; or

(III) A short notice service line relocation request.]

2. Installation required. An excess flow valve (EFV) installation must comply with the performance standards in subsection (8)(O). The operator must install an EFV on any new or replaced service line serving a single-family residence after February 12, 2010, unless one (1) or more of the following conditions is present:

A. The service line does not operate at a pressure of ten (10) psi gauge or greater throughout the year;

B. The operator has prior experience with contaminants in the gas stream that could interfere with the EFV's operation or cause loss of service to a residence;

C. An EFV could interfere with necessary operation or maintenance activities, such as blowing liquids from the line; or

D. An EFV meeting performance standards in subsection (8)(O) is not commercially available to the operator.

3. Reporting. Each operator must report the EFV measures detailed in the annual report required by 4 CSR 240-40.020(7)(A).

(9) Requirements for Corrosion Control.

(I) External Corrosion Control—Monitoring. (192.465)

1. Each pipeline that is under cathodic protection must be tested at least once each calendar year, but with intervals not exceeding fifteen (15) months, to determine whether the cathodic protection meets the requirements of subsection (9)(H). (192.463) However, if tests at those intervals are impractical for separately protected short sections of mains or transmission lines, not in excess of one hundred feet (100') **(thirty meters (30 m))** *[(30 meters)]*, or separately protected service lines, these pipelines may be surveyed on a sampling basis. At least twenty percent (20%) of these protected structures, distributed over the entire system, must be surveyed each calendar year, with a different twenty percent (20%) checked each subsequent year, so that the entire system is tested in each five- (5-)*[-]* year period. Each short section of metallic pipe less than one hundred feet (100') **(thirty meters (30 m))** *[(30 meters)]* in length installed and cathodically protected in accordance with paragraph (9)(R)2. (192.483[b]), each segment of pipe cathodically protected in accordance with paragraph (9)(R)3. (192.483[c]) and each electrically isolated metallic fitting not meeting the requirements of paragraph (9)(D)5. (192.455[f]) must be monitored at a minimum rate of ten percent (10%) each calendar year, with a different ten percent (10%) checked each subsequent year, so that the entire system is tested every ten (10) years.

2. Each cathodic protection rectifier or other impressed current power source must be inspected six (6) times each calendar year but with intervals not exceeding two and one-half (2 1/2) months to ensure that it is operating.

3. Each reverse current switch, each diode and each interference bond whose failure would jeopardize structure protection must be electrically checked for proper performance six (6) times each calendar year, but with intervals not exceeding two and one-half (2 1/2) months. Each other interference bond must be checked at least once each calendar year, but with intervals not exceeding fifteen (15) months.

4. Each operator shall take prompt remedial action to correct any deficiencies indicated by the monitoring required in paragraphs (9)(I)1.–3. Corrective measures must be completed within six (6) months unless otherwise approved by designated commission personnel.

5. After the initial evaluation required by paragraphs (9)(D)2. and (9)(E)2., each operator must, not less than every three (3) years at intervals not exceeding thirty-nine (39) months, reevaluate its unprotected pipelines and cathodically protect them in accordance with section (9) in areas in which active corrosion is found, except that unprotected steel service lines must be replaced as required by subsection (15)(C). The operator must determine the areas of active corrosion by electrical survey. However, on distribution lines and where an electrical survey is impractical on transmission lines, areas of active corrosion may be determined by other means that include review and analysis of leak repair and inspection records, corrosion monitoring records, exposed pipe inspection records, the pipeline environment, and by instrument leak detection surveys (see subsections (13)(D) and (13)(M)). When the operator conducts electrical surveys, the operator must demonstrate that the surveys effectively

identify areas of active corrosion. *[In this subsection and subsection (9)(E):*

A. Active corrosion means continuing corrosion which, unless controlled, could result in a condition that is detrimental to public safety;

B. Electrical survey means a series of closely spaced pipe-to-soil readings over a pipeline that are subsequently analyzed to identify locations where a corrosive current is leaving the pipeline; and

C. Pipeline environment includes soil resistivity (high or low), soil moisture (wet or dry), soil contaminants that may promote corrosive activity, and other known conditions that could affect the probability of active corrosion.]

(12) Operations.

(C) Procedural Manual for Operations, Maintenance, and Emergencies. (192.605)

1. General. Each operator shall prepare and follow for each pipeline, a manual of written procedures for conducting operations and maintenance activities and for emergency response. For transmission lines that are not exempt under subparagraph (12)(C)3.E., the manual must also include procedures for handling abnormal operations. This manual must be reviewed and updated by the operator at intervals not exceeding fifteen (15) months, but at least once each calendar year. The manual must be revised, as necessary, within one (1) year of the effective date of revisions to this rule. This manual must be prepared before initial operations of a pipeline system commence and appropriate parts of the manual must be kept at locations where operations and maintenance activities are conducted.

2. Maintenance and normal operations. The manual required by paragraph (12)(C)1. must include procedures for the following, if applicable, to provide safety during maintenance and normal operations:

A. Operating, maintaining**,** and repairing the pipeline in accordance with each of the requirements of this section and sections (13) and (14);

B. Controlling corrosion in accordance with the operations and maintenance requirements of section (9);

C. Making construction records, maps**,** and operating history available to appropriate operating personnel;

D. Gathering of data needed for reporting incidents under 4 CSR 240-40.020 in a timely and effective manner;

E. Starting up and shutting down any part of a pipeline in a manner designed to assure operation within the MAOP limits prescribed by this rule, plus the build-up allowed for operation of pressure limiting and control devices;

F. Maintaining compressor stations, including provisions for isolating units or sections of pipe and for purging before returning to service;

G. Starting, operating**,** and shutting down gas compressor units;

H. Periodically reviewing the work done by operator personnel to determine the effectiveness*[,]* and adequacy of the procedures used in normal operation and maintenance and modifying the procedures when deficiencies are found;

I. Inspecting periodically to ensure that operating pressures are appropriate for the class location;

J. Taking adequate precautions in excavated trenches to protect personnel from the hazards of unsafe accumulations of vapor or gas, and making available, when needed at the excavation, emergency rescue equipment including a breathing apparatus and a rescue harness and line;

K. Systematically and routinely testing and inspecting pipe-type or bottle-type holders including:

(I) Provision for detecting external corrosion before the strength of the container has been impaired;

(II) Periodic sampling and testing of gas in storage to determine the dew point of vapors contained in the stored gas that, if condensed, might cause internal corrosion or interfere with the safe operation of the storage plant; and

(III) Periodic inspection and testing of pressure limiting equipment to determine that it is in a safe operating condition and has adequate capacity;

L. Continuing observations during all routine activities including, but not limited to, meter reading and cathodic protection work, for the purpose of detecting potential leaks by observing vegetation and odors. Potential leak indications must be recorded and responded to in accordance with section (14);

M. Testing and inspecting of customer-owned gas piping and equipment **in accordance with subsection (12)(S)**; *[and]*

N. Responding promptly to a report of a gas odor inside or near a building, unless the operator's emergency procedures under (12)(J)1.C. specifically apply to these reports*[.]* **; and**

O. Implementing the applicable control room management procedures required by subsection (12)(T).

3. Abnormal operation. For transmission lines the manual required by paragraph (12)(C)1. must include procedures for the following to provide safety when operating design limits have been exceeded:

A. Responding to, investigating**,** and correcting the cause of—

(I) Unintended closure of valves or shutdowns;

(II) Increase or decrease in pressure or flow rate outside normal operating limits;

(III) Loss of communications;

(IV) Operation of any safety device; and

(V) Any other foreseeable malfunction of a component, deviation from normal operation or personnel error which could cause a hazard to persons or property;

B. Checking variations from normal operation after abnormal operation has ended at sufficient critical locations in the system to determine continued integrity and safe operation;

C. Notifying responsible operator personnel when notice of an abnormal operation is received;

D. Periodically reviewing the response of operator personnel to determine the effectiveness of the procedures controlling abnormal operation and taking corrective action where deficiencies are found; and

E. The requirements of this paragraph (12)(C)3. do not apply to natural gas distribution operations that are operating transmission lines in connection with their distribution system.

4. Safety-related conditions. The manual required by paragraph (12)(C)1. must include instructions enabling personnel who perform operation and maintenance activities to recognize conditions that potentially may be safety-related conditions that are subject to the commission's reporting requirements.

5. Surveillance, emergency response**,** and accident investigation. The procedures required by paragraph (12)(H)1. and subsections (12)(J) and (L) (192.613[a], 192.615 and 192.617) must be included in the manual required by paragraph (12)(C)1.

(J) Emergency Plans. (192.615)

1. Each operator shall establish written procedures to minimize the hazard resulting from a gas pipeline emergency. At a minimum, the procedures must provide for the following:

A. Receiving, identifying**,** and classifying notices of events which require immediate response by the operator;

B. Establishing and maintaining adequate means of communication with appropriate fire, police**,** and other public officials;

C. Responding promptly and effectively to a notice of each type of emergency, including the following:

(I) Gas detected inside or near a building;

(II) Fire located near or directly involving a pipeline facility;

(III) Explosion occurring near or directly involving a pipeline facility; and

(IV) Natural disaster;

D. Making available personnel, equipment, tools**,** and materials, as needed at the scene of an emergency;

E. Taking actions directed toward protecting people first and then property;

F. Causing an emergency shutdown and pressure reduction in any section of the operator's pipeline system necessary to minimize hazards to life or property;

G. Making safe any actual or potential hazard to life or property;

H. Notifying appropriate fire, police**,** and other public officials of gas pipeline emergencies and coordinating with them both planned responses and actual responses during an emergency;

I. Safely restoring any service outage; *[and]*

J. Beginning action under subsection (12)(L) (192.617), if applicable, as soon after the end of the emergency as possible*[.]***; and**

K. Actions required to be taken by a controller during an emergency in accordance with subsection (12)(T).

2. Each operator shall—

A. Furnish its supervisors who are responsible for emergency action a copy of that portion of the latest edition of the emergency procedures established under paragraph (12)(J)1. as necessary for compliance with those procedures;

B. Train the appropriate operating personnel and conduct an annual review to assure that they are knowledgeable of the emergency procedures and verify that the training is effective; and

C. Review employee activities to determine whether the procedures were effectively followed in each emergency.

3. Each operator shall establish and maintain liaison with appropriate fire, police**,** and other public officials to—

A. Learn the responsibility and resources of each government organization that may respond to a gas pipeline emergency;

B. Acquaint the officials with the operator's ability in responding to a gas pipeline emergency;

C. Identify the types of gas pipeline emergencies of which the operator notifies the officials; and

D. Plan how the operator and officials can engage in mutual assistance to minimize hazards to life or property.

(K) Public Awareness. (192.616)

1. **Except for an operator of a master meter system covered under paragraph (12)(K)10.,** *[E]***e**ach pipeline operator must develop and implement a written continuing public education program that follows the guidance provided in the American Petroleum Institute's (API) Recommended Practice (RP) 1162 (incorporated by reference in 49 CFR 192.7 and adopted in **subsection** (1)(D)). In addition, the program must provide for notification of the intended groups on the following schedule:

A. Appropriate government organizations and persons engaged in excavation related activities must be notified at least annually;

B. The public must be notified at least semiannually; and

C. Customers must be notified at least semiannually by mailings or hand-delivered messages and at least nine (9) times a calendar year by billing messages.

2. The operator's program must follow the general program recommendations of API RP 1162 and assess the unique attributes and characteristics of the operator's pipeline and facilities.

3. The operator must follow the general program recommendations, including baseline and supplemental requirements of API RP 1162, unless the operator provides justification in its program or procedural manual as to why compliance with all or certain provisions of the recommended practice is not practicable and not necessary for safety.

4. The operator's program must specifically include provisions to educate the public, appropriate government organizations, and persons engaged in excavation related activities on:

A. Use of a one- **(1-)** call notification system prior to excavation and other damage prevention activities;

B. Possible hazards associated with unintended releases from a gas pipeline facility;

C. Physical indications that such a release may have occurred;

D. Steps that should be taken for public safety in the event of a gas pipeline release; and

E. Procedures for reporting such an event.

5. The program must include activities to advise affected municipalities, school districts, businesses, and residents of pipeline facility locations.

6. The program and the media used must be as comprehensive as necessary to reach all areas in which the operator transports gas.

7. The program must be conducted in English and in other languages commonly understood by a significant number and concentration of the non-English speaking population in the operator's area.

8. Operators in existence on June 20, 2005, must have completed their written programs no later than June 20, 2006. *[As an exception, master meter operators having less than twenty-five (25) customers must have completed development and documentation of their programs no later than June 20, 2007.]* **The operator of a master meter covered under paragraph (12)(K)10. must complete development of its written procedure by June 13, 2008.** Operators must submit their completed programs and any program changes to designated commission personnel as required by subsection (1)(J).

9. The operator's program documentation and evaluation results must be available for periodic review by designated commission personnel.

10. Unless the operator transports gas as a primary activity, the operator of a master meter is not required to develop a public awareness program as prescribed in paragraphs (12)(K)1.–7. Instead the operator must develop and implement a written procedure to provide its customers public awareness messages twice annually. If the master meter is located on property the operator does not control, the operator must provide similar messages twice annually to persons controlling the property. The public awareness message must include:

A. A description of the purpose and reliability of the pipeline;

B. An overview of the hazards of the pipeline and prevention measures used;

C. Information about damage prevention;

D. How to recognize and respond to a leak; and

E. How to get additional information.

(M) Maximum Allowable Operating Pressure—Steel or Plastic Pipelines. (192.619 **and 192.620**)

1. Except as provided in paragraph (12)(M)3., no person may operate a segment of steel or plastic pipeline at a pressure that exceeds the lowest of the following:

A. The design pressure of the weakest element in the segment, determined in accordance with sections (3) and (4). However, for steel pipe in pipelines being converted under subsection (1)(H) or uprated under section (11), if any variable necessary to determine the design pressure under the design formula in subsection (3)(C) is unknown, one **(1)** of the following pressures is to be used as design pressure:

(I) Eighty percent (80%) of the first test pressure that produces yield under section N5 of Appendix N of ASME B31.8 (incorporated by reference in 49 CFR 192.7 and adopted in **subsection** (1)(D)), reduced by the appropriate factor in **part** (12)(M)1.B.(II); or

(II) If the pipe is twelve and three-quarter inches (12 3/4") **(three hundred twenty-four** (324**)** mm) or less in outside diameter and is not tested to yield under this paragraph, two hundred (200) psi **(one thousand three hundred seventy-nine** (1379**)** kPa) gauge;

B. The pressure obtained by dividing the highest pressure to which the segment was tested after construction or uprated as follows:

(I) For plastic pipe in all locations, the test pressure is divided by a factor of 1.5; and

(II) For steel pipe operated at one hundred (100) psi **(six hundred eighty-nine** (689**)** kPa) gauge or more, the test pressure is divided by a factor determined in accordance with the following table:

Class Location	Factors[1], segment - Installed before (Nov. 12, 1970)	Installed after (Nov. 11, 1970)	Converted under subsection (1)(H) (192.14)
1	1.1	1.1	1.25
2	1.25	1.25	1.25
3	1.4	1.5	1.5
4	1.4	1.5	1.5

[1]For segments installed, uprated**,** or converted after July 31, 1977 that are located on a platform in inland navigable waters, including a pipe riser, the factor is 1.5.

C. The highest actual operating pressure to which the segment was subjected during the five (5) years preceding the applicable date in the second column. This pressure restriction applies unless the segment was tested in accordance with subparagraph (12)(M)1.B. after the applicable date in the third column or the segment was uprated in accordance with section (11);

Pipeline Segment	Pressure Date	Test date
Onshore gathering line that first became subject to 49 CFR 192.8 and 192.9 after April 13, 2006 (see **subsection** (1)(E)).	March 15, 2006, or date line becomes subject to this rule, whichever is later.	Five (5) years preceding applicable date in second column.
Onshore transmission line that was a gathering line not subject to 49 CFR 192.8 and 192.9 before March 15, 2006 (see **subsection** (1)(E)).	March 15, 2006	March 15, 2001
All other pipelines.	July 1, 1970	July 1, 1965

D. The pressure determined by the operator to be the maximum safe pressure after considering the history of the segment, particularly known corrosion and the actual operating pressure.

2. No person may operate a segment of pipeline to which this subsection applies unless overpressure protective devices are installed for the segment in a manner that will prevent the maximum allowable operating pressure from being exceeded, in accordance with subsection (4)(CC). (192.195)

3. The requirements on pressure restrictions in this subsection do not apply in the following instance. An operator may operate a segment of pipeline found to be in satisfactory condition, considering its operating and maintenance history, at the highest actual operating pressure to which the segment was subjected during the five (5) years preceding the applicable date in the second column of the table in **subparagraph** (12)(M)1.C. An operator must still comply with **subsection** (12)(G).

4. Alternative maximum allowable operating pressure for certain steel pipelines. (192.620) The federal regulations at 49 CFR 192.620 are not adopted in this rule.

(T) Control Room Management. (192.631)

1. General.

A. This subsection applies to each operator of a pipeline facility with a controller working in a control room who monitors and controls all or part of a pipeline facility through a SCADA system. Each operator must have and follow written control room management procedures that implement the requirements of this subsection, except as follows. For each control room where an operator's activities are limited to either or both of distribution with less than two hundred fifty thousand (250,000) services or transmission without a compressor station, the operator must have and follow written procedures that implement only paragraphs (12)(T)4. (regarding fatigue), (12)(T)9. (regarding compliance validation), and (12)(T)10. (regarding compliance and deviations).

B. The procedures required by this subsection must be integrated, as appropriate, with operating and emergency procedures required by subsections (12)(C) and (12)(J). An operator must develop the procedures no later than August 1, 2011, and must implement the procedures according to the following schedule. The procedures required by paragraph (12)(T)2.; subparagraphs (12)(T)3.E. and (12)(T)4.B. and C.; and paragraphs (12)(T)6. and (12)(T)7. must be implemented no later than

October 1, 2011. The procedures required by subparagraphs (12)(T)3.A.–D. and (12)(T)4.A. and D.; and paragraph (12)(T)5. must be implemented no later than August 1, 2012. The training procedures required by paragraph (12)(T)8. must be implemented no later than August 1, 2012, except that any training required by another paragraph or subparagraph of this subsection must be implemented no later than the deadline for that paragraph or subparagraph.

2. Roles and responsibilities. Each operator must define the roles and responsibilities of a controller during normal, abnormal, and emergency operating conditions. To provide for a controller's prompt and appropriate response to operating conditions, an operator must define each of the following:

A. A controller's authority and responsibility to make decisions and take actions during normal operations;

B. A controller's role when an abnormal operating condition is detected, even if the controller is not the first to detect the condition, including the controller's responsibility to take specific actions and to communicate with others;

C. A controller's role during an emergency, even if the controller is not the first to detect the emergency, including the controller's responsibility to take specific actions and to communicate with others; and

D. A method of recording controller shift-changes and any hand-over of responsibility between controllers.

3. Provide adequate information. Each operator must provide its controllers with the information, tools, processes, and procedures necessary for the controllers to carry out the roles and responsibilities the operator has defined by performing each of the following:

A. Implement sections 1, 4, 8, 9, 11.1, and 11.3 of API RP 1165 (incorporated by reference in 49 CFR 192.7 and adopted in (1)(D)) whenever a SCADA system is added, expanded or replaced, unless the operator demonstrates that certain provisions of sections 1, 4, 8, 9, 11.1, and 11.3 of API RP 1165 are not practical for the SCADA system used;

B. Conduct a point-to-point verification between SCADA displays and related field equipment when field equipment is added or moved and when other changes that affect pipeline safety are made to field equipment or SCADA displays;

C. Test and verify an internal communication plan to provide adequate means for manual operation of the pipeline safely, at least once each calendar year, but at intervals not to exceed fifteen (15) months;

D. Test any backup SCADA systems at least once each calendar year, but at intervals not to exceed fifteen (15) months; and

E. Establish and implement procedures for when a different controller assumes responsibility, including the content of information to be exchanged.

4. Fatigue mitigation. Each operator must implement the following methods to reduce the risk associated with controller fatigue that could inhibit a controller's ability to carry out the roles and responsibilities the operator has defined:

A. Establish shift lengths and schedule rotations that provide controllers off-duty time sufficient to achieve eight (8) hours of continuous sleep;

B. Educate controllers and supervisors in fatigue mitigation strategies and how off-duty activities contribute to fatigue;

C. Train controllers and supervisors to recognize the effects of fatigue; and

D. Establish a maximum limit on controller hours-of-service, which may provide for an emergency deviation from the maximum limit if necessary for the safe operation of a pipeline facility.

5. Alarm management. Each operator using a SCADA system must have a written alarm management plan to provide for effective controller response to alarms. An operator's plan must include provisions to:

A. Review SCADA safety-related alarm operations using a process that ensures alarms are accurate and support safe pipeline operations;

B. Identify at least once each calendar month points affecting safety that have been taken off scan in the SCADA host, have had alarms inhibited, generated false alarms, or that have had forced or manual values for periods of time exceeding that required for associated maintenance or operating activities;

C. Verify the correct safety-related alarm set-point values and alarm descriptions at least once each calendar year, but at intervals not to exceed fifteen (15) months;

D. Review the alarm management plan required by this paragraph at least once each calendar year, but at intervals not exceeding fifteen (15) months, to determine the effectiveness of the plan;

E. Monitor the content and volume of general activity being directed to and required of each controller at least once each calendar year, but at intervals not to exceed fifteen (15) months, that will assure controllers have sufficient time to analyze and react to incoming alarms; and

F. Address deficiencies identified through the implementation of subparagraphs (12)(T)5.A.–E.

6. Change management. Each operator must assure that changes that could affect control room operations are coordinated with the control room personnel by performing each of the following:

A. Establish communications between control room representatives, operator's management, and associated field personnel when planning and implementing physical changes to pipeline equipment or configuration;

B. Require its field personnel to contact the control room when emergency conditions exist and when making field changes that affect control room operations; and

C. Seek control room or control room management participation in planning prior to implementation of significant pipeline hydraulic or configuration changes.

7. Operating experience. Each operator must assure that lessons learned from its operating experience are incorporated, as appropriate, into its control room management procedures by performing each of the following:

A. Review federal incidents that must be reported pursuant to 4 CSR 240-40.020 to determine if control room actions contributed to the event and, if so, correct, where necessary, deficiencies related to—

(I) Controller fatigue;

(II) Field equipment;

(III) The operation of any relief device;

(IV) Procedures;

(V) SCADA system configuration; and

(VI) SCADA system performance.

B. Include lessons learned from the operator's experience in the training program required by this subsection.

8. Training. Each operator must establish a controller training program and review the training program content to identify potential improvements at least once each calendar year, but at intervals not to exceed fifteen (15) months. An operator's program must provide for training each controller to carry out the roles and responsibilities defined by the operator. In addition, the training program must include the following elements:

A. Responding to abnormal operating conditions likely to occur simultaneously or in sequence;

B. Use of a computerized simulator or non-computerized (tabletop) method for training controllers to recognize abnormal operating conditions;

C. Training controllers on their responsibilities for communication under the operator's emergency response procedures;

D. Training that will provide a controller a working knowledge of the pipeline system, especially during the development of

abnormal operating conditions; and

E. For pipeline operating setups that are periodically, but infrequently used, providing an opportunity for controllers to review relevant procedures in advance of their application.

9. Compliance validation. Operators must submit their procedures to designated commission personnel as required by subsection (1)(J).

10. Compliance and deviations. An operator must maintain for review during inspection—

A. Records that demonstrate compliance with the requirements of this subsection; and

B. Documentation to demonstrate that any deviation from the procedures required by this subsection was necessary for the safe operation of a pipeline facility.

(13) Maintenance.

(G) Transmission Lines—General Requirements for Repair Procedures. (192.711)

1. **Temporary repairs.** Each operator *[shall]* **must** take immediate temporary measures to protect the public whenever —

A. A leak, imperfection**,** or damage that impairs its serviceability is found in a segment of steel transmission line operating at or above forty percent (40%) of the SMYS; and

B. It is not feasible to make a permanent repair at the time of discovery.*[As soon as feasible the operator shall make permanent repairs.]*

2. Permanent repairs. An operator must make permanent repairs on its pipeline system according to the following:

A. Non integrity management repairs: The operator must make permanent repairs as soon as feasible; and

B. Integrity management repairs: When an operator discovers a condition on a pipeline covered under section (16) – Pipeline Integrity Management for Transmission Lines (Subpart O), the operator must remediate the condition as prescribed by 49 CFR 192.933(d) (this federal regulation is incorporated by reference and adopted in section (16)).

*[2.]***3. Welded patch.** Except as provided in subparagraph (13)(J)2.C. (192.717[b][3]), no operator may use a welded patch as a means of repair.

(O) Abandonment or Deactivation of Facilities. (192.727)

1. Each operator shall perform abandonment or deactivation of pipelines in accordance with the requirements of this subsection.

2. Each pipeline abandoned in place must be disconnected from all sources and supplies of gas, purged of gas and sealed at the ends. However, the pipeline need not be purged when the volume of gas is so small that there is no potential hazard.

3. Except for service lines, each inactive pipeline that is not being maintained under this rule must be disconnected from all sources and supplies of gas, purged of gas and sealed at the ends. However, the pipeline need not be purged when the volume of gas is so small that there is no potential hazard.

4. Whenever service to a customer is discontinued, one (1) of the following must be complied with:

A. The valve that is closed to prevent the flow of gas to the customer must be provided with a locking device or other means designed to prevent the opening of the valve by persons other than those authorized by the operator;

B. A mechanical device or fitting that will prevent the flow of gas must be installed in the service line or in the meter assembly; or

C. The customer's piping must be physically disconnected from the gas supply and the open pipe ends sealed.

5. If air is used for purging, the operator shall ensure that a combustible mixture is not present after purging.

6. Each abandoned vault must be filled with a suitable compacted material.

7. For each abandoned pipeline facility that crosses over, under or through a commercially navigable waterway, the last operator of that facility must file a report upon abandonment of that facility. The addresses (mail and *[e-]***E**mail) and phone numbers given in this paragraph are from 49 CFR 192.727(g) as published on October 1, *[2006]* **2009**. Please consult the current edition of 49 CFR part 192 for any updates to these addresses and phone numbers.

A. The preferred method to submit data on pipeline facilities abandoned after October 10, 2000**,** is to the National Pipeline Mapping System (NPMS) in accordance with the NPMS "Standards for Pipeline and Liquefied Natural Gas Operator Submissions." To obtain a copy of the NPMS Standards, please refer to the NPMS homepage at www.npms.phmsa.dot.gov or contact the NPMS National Repository at **(**703**)***[-]* 317-3073. A digital data format is preferred, but hard copy submissions are acceptable if they comply with the NPMS Standards. In addition to the NPMS-required attributes, operators must submit the date of abandonment, diameter, method of abandonment, and certification that, to the best of the operator's knowledge, all of the reasonably available information requested was provided and, to the best of the operator's knowledge, the abandonment was completed in accordance with applicable laws. Refer to the NPMS Standards for details in preparing your data for submission. The NPMS Standards also include details of how to submit data. Alternatively, operators may submit reports by mail, fax**,** or *[e-]***E**mail to the *[Information Officer]* **Office of Pipeline Safety**, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, *[Room 2103, 400 Seventh Street, SW]* **Information Resources Manager, PHP-10, 1200 New Jersey Avenue SE**, Washington**,** DC 20590**-0001**; fax (202) 366-4566; *[e-]***E**mail, *[roger.little@dot.gov]* **InformationResourcesManager@phmsa.dot.gov**. The information in the report must contain all reasonably available information related to the facility, including information in the possession of a third party. The report must contain the location, size, date, method of abandonment, and a certification that the facility has been abandoned in accordance with all applicable laws.

B. *(Reserved)*

(R) Pressure Limiting and Regulating Stations—Inspection and Testing. (192.739)

1. Each pressure limiting station, relief device (except rupture discs) and pressure regulating station and its equipment must be subjected at intervals not exceeding fifteen (15) months but at least once each calendar year to inspections and tests to determine that it is—

A. In good mechanical condition;

B. Adequate from the standpoint of capacity and reliability of operation for the service in which it is employed;

C. Except as provided in paragraph (13)(R)2., set to control or relieve at the correct pressures that will prevent downstream pressures from exceeding the allowable pressures under subsections (4)(FF)*[,]* and (12)(M)–(O);

D. Properly installed and protected from dirt, liquids**,** and other conditions that might prevent proper operation;

E. Properly protected from unauthorized operation of valves in accordance with paragraph (4)(EE)8.;

F. Equipped to indicate regulator malfunctions in accordance with paragraphs (4)(EE)10. and 11. in a manner that is adequate from the standpoint of reliability of operation; and

G. Equipped with adequate over-pressure protection in accordance with paragraph (4)(EE)9.

2. For steel pipelines whose MAOP is determined under paragraph (12)(M)3., if the MAOP is sixty (60) psi **(four hundred fourteen** (414**)** kPa) *[guage]* **gauge** or more, the control or relief pressure limit is as follows:

A. If the MAOP produces a hoop stress that is greater than seventy-two percent (72%) of SMYS, then the pressure limit is MAOP plus four percent (4%).

B. If the MAOP produces a hoop stress that is unknown as a percentage of SMYS, then the pressure limit is a pressure that will prevent unsafe operation of the pipeline considering its operating and maintenance history and MAOP.

(16) Pipeline Integrity Management for Transmission Lines.

(A) As set forth in the *Code of Federal Regulations* (CFR) dated October 1, *[2006]* **2011**, *[the subsequent amendment 192-103 (published in Federal Register on February 1, 2007, page 72 FR 4655), and the subsequent amendment published on July 17, 2007 (published in Federal Register on July 17, 2007, page 72 FR 39012),]* the federal regulations in 49 CFR part 192, subpart O and in 49 CFR part 192, appendix E are incorporated by reference and made a part of this rule. This rule does not incorporate any subsequent amendments to subpart O and appendix E to 49 CFR part 192.

(B) The *Code of Federal Regulations* and the *Federal Register* are published by the Office of the Federal Register, National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740-6001. The October 1, *[2006]* **2011,** version of 49 CFR part 192 is available at *[www.access.gpo.gov/nara/cfr/cfr-table-search.html]* **www.gpo.gov/fdsys/search/showcitation.action**. *[The Federal Register publications on page 72 FR 4655 and page 72 FR 39012 are available at www.gpoaccess.gov/fr/advanced.html.]*

(C) Subpart O and appendix E to 49 CFR part 192 contain the federal regulations regarding pipeline integrity management for transmission lines. Subpart O includes sections 192.901 through 192.951. Information regarding subpart O is available at http://primis.phmsa.dot.gov/gasimp.

(D) When sending a notification or filing a report with PHMSA in accordance with this section, a copy must also be submitted concurrently to designated commission personnel. This is consistent with the requirement in 4 CSR 240-40.020(5)(A) for reports to PHMSA.

(E) In 49 CFR 192.911(m) and (n), the references to "A State or local pipeline safety authority when the covered segment is located in a State where OPS has an interstate agent agreement" do not apply to Missouri and are replaced with "designated commission personnel." As a result, the communication plan required by 49 CFR 192.911(m) must include procedures for addressing safety concerns raised by designated commission personnel and the procedures required by 49 CFR 192.911(n) must address providing a copy of the operator's risk analysis or integrity management program to designated commission personnel.

(F) For the purposes of this section, the following substitutions should be made for certain references in the federal pipeline safety regulations that are incorporated by reference in subsection (16)(A).

1. In 49 CFR 192.909(b), 192.921(a)(4), and 192.937(c)(4), the references to "a State or local pipeline safety authority when either a covered segment is located in a State where OPS has an interstate agent agreement, or an intrastate covered segment is regulated by that State" should refer to "designated commission personnel" instead.

2. In 49 CFR 192.917(e)(5), the reference to "part 192" should refer to "4 CSR 240-40.030" instead.

3. In 49 CFR 192.921(a)(2) and 192.937(c)(2), the references to "subpart J of this part" should refer to "4 CSR 240-40.030(10)" instead.

4. In 49 CFR 192.933(a)(1) and (2), the references to "a State pipeline safety authority when either a covered segment is located in a State where PHMSA has an interstate agent agreement, or an intrastate covered segment is regulated by that State" should refer to "designated commission personnel" instead.

5. In 49 CFR 192.935(b)(1)(ii), the reference to "an incident under part 191" should refer to "a federal incident under 4 CSR 240-40.020" instead.

6. In 49 CFR 192.935(d)(2), the reference to "section 192.705" should refer to "4 CSR 240-40.030(13)(C)" instead.

7. In 49 CFR 192.941(b)(2)(i), the reference to "section 192.706" should refer to "4 CSR 240-40.030(13)(D)" instead.

8. In 49 CFR 192.945(a), the reference to "section 191.17 of this subchapter" should refer to "4 CSR 240-40.020(10)" instead.

9. In 49 CFR 192.947(i), the reference to "a State authority with which OPS has an interstate agent agreement, and a State or local pipeline safety authority that regulates a covered pipeline segment within that State" should refer to "designated commission personnel" instead.

10. In 49 CFR 192.951, the reference to "section 191.7 of this subchapter" should refer to "4 CSR 240-40.020(5)(A)" instead.

(17) Gas Distribution Pipeline Integrity Management (IM)

(A) What Definitions Apply to this Section? (192.1001) The following definitions apply to this section.

1. Excavation damage means any impact that results in the need to repair or replace an underground facility due to a weakening, or the partial or complete destruction, of the facility, including, but not limited to, the protective coating, lateral support, cathodic protection, or the housing for the line device or facility.

2. Hazardous leak means a Class 1 leak as defined in paragraph (14)(C)1.

3. Integrity management plan or IM plan means a written explanation of the mechanisms or procedures the operator will use to implement its integrity management program and to ensure compliance with this section.

4. Integrity management program or IM program means an overall approach by an operator to ensure the integrity of its gas distribution system.

5. Mechanical fitting means a mechanical device used to connect sections of pipe. The term ''Mechanical fitting'' applies only to—

A. Stab Type fittings;

B. Nut Follower Type fittings;

C. Bolted Type fittings; or

D. Other Compression Type fittings.

(B) What Do the Regulations in this Section Cover? (192.1003) This section prescribes minimum requirements for an IM program for any gas distribution pipeline covered under this rule. A gas distribution operator, other than a master meter operator, must follow the requirements in subsections (17)(C)–(G). A master meter operator of a gas distribution line must follow the requirements in subsection (17)(H). Information about IM programs is available at http://primis.phmsa.dot.gov/dimp.

(C) What Must a Gas Distribution Operator (Other than a Master Meter Operator) Do to Implement this Section? (191.1005) No later than August 2, 2011, a gas distribution operator must develop and implement an integrity management program that includes a written integrity management plan as specified in subsection (17)(D).

(D) What Are the Required Elements of an Integrity Management Plan? (192.1007) A written integrity management plan must contain procedures for developing and implementing the following elements:

1. Knowledge. An operator must demonstrate an understanding of its gas distribution system developed from reasonably available information.

A. Identify the characteristics of the pipeline's design and operations and the environmental factors that are necessary to assess the applicable threats and risks to its gas distribution pipeline.

B. Consider the information gained from past design, operations, and maintenance.

C. Identify additional information needed and provide a plan for gaining that information over time through normal activities conducted on the pipeline (e.g., design, construction, operations, or maintenance activities).

D. Develop and implement a process by which the IM program will be reviewed periodically and refined and improved as needed.

E. Provide for the capture and retention of data on any new pipeline installed. The data must include, at a minimum, the location where the new pipeline is installed and the material of which it is constructed.

2. Identify threats. The operator must consider the following categories of threats to each gas distribution pipeline: corrosion, natural forces, excavation damage, other outside force damage, material or welds, equipment failure, incorrect operation, and other concerns that could threaten the integrity of its pipeline. An operator must consider reasonably available information to identify existing and potential threats. Sources of data may include, but are not limited to, incident and leak history, corrosion control records, continuing surveillance records, patrolling records, maintenance history, and excavation damage experience.

3. Evaluate and rank risk. An operator must evaluate the risks associated with its distribution pipeline. In this evaluation, the operator must determine the relative importance of each threat and estimate and rank the risks posed to its pipeline. This evaluation must consider each applicable current and potential threat, the likelihood of failure associated with each threat, and the potential consequences of such a failure. An operator may subdivide its pipeline into regions with similar characteristics (e.g., contiguous areas within a distribution pipeline consisting of mains, services, and other appurtenances; areas with common materials or environmental factors), and for which similar actions likely would be effective in reducing risk.

4. Identify and implement measures to address risks. Determine and implement measures designed to reduce the risks from failure of its gas distribution pipeline. These measures must include an effective leak management program (unless all leaks are repaired when found).

5. Measure performance, monitor results, and evaluate effectiveness.

A. Develop and monitor performance measures from an established baseline to evaluate the effectiveness of its IM program. An operator must consider the results of its performance monitoring in periodically re-evaluating the threats and risks. These performance measures must include the following:

(I) Number of hazardous leaks either eliminated or repaired as required by paragraph (14)(C)1. (or total number of leaks if all leaks are repaired when found), categorized by cause;

(II) Number of excavation damages;

(III) Number of excavation tickets (receipt of information by the underground facility operator from the notification center);

(IV) Total number of leaks either eliminated or repaired, categorized by cause;

(V) Number of hazardous leaks either eliminated or repaired as required by paragraph (14)(C)1. (or total number of leaks if all leaks are repaired when found), categorized by material; and

(VI) Any additional measures the operator determines are needed to evaluate the effectiveness of the operator's IM program in controlling each identified threat.

6. Periodic evaluation and improvement. An operator must re-evaluate threats and risks on its entire pipeline and consider the relevance of threats in one (1) location to other areas. Each operator must determine the appropriate period for conducting complete program evaluations based on the complexity of its system and changes in factors affecting the risk of failure. An operator must conduct a complete program re-evaluation at least every five (5) years. The operator must consider the results of the performance monitoring in these evaluations.

7. Report results. Report, on an annual basis, the four (4) measures listed in (17)(D)5.A.(I)–(IV), as part of the annual report required by 4 CSR 240-40.020(7)(A). An operator also must report the four (4) measures to designated commission personnel.

(E) What Must an Operator Report When a Mechanical Fitting Fails? (192.1009)

1. Except as provided in paragraph (17)(E)2., each operator of a distribution pipeline system must submit a report on each mechanical fitting failure, excluding any failure that results only in a nonhazardous leak. The report(s) must be submitted in accordance with 4 CSR 240-40.020(7)(B) (191.12).

2. The mechanical fitting failure reporting requirements in paragraph (17)(E)1. do not apply to master meter operators.

(F) What Records Must an Operator Keep? (192.1011) An operator must maintain records demonstrating compliance with the requirements of this section for at least ten (10) years. The records must include copies of superseded integrity management plans developed under this section.

(G) When May an Operator Deviate from Required Periodic Inspections Under this Rule? (192.1013)

1. An operator may propose to reduce the frequency of periodic inspections and tests required in this rule on the basis of the engineering analysis and risk assessment required by this section.

2. An operator must submit its written proposal to the secretary of the commission. The commission may accept the proposal on its own authority, with or without conditions and limitations as the commission deems appropriate, on a showing that the operator's proposal, which includes the adjusted interval, will provide an equal or greater overall level of safety.

3. An operator may implement an approved reduction in the frequency of a periodic inspection or test only where the operator has developed and implemented an integrity management program that provides an equal or improved overall level of safety despite the reduced frequency of periodic inspections.

(H) What Must a Master Meter Operator Do to Implement this Section? (192.1015)

1. General. No later than August 2, 2011, the operator of a master meter system must develop and implement an IM program that includes a written IM plan as specified in paragraph (17)(G)2. The IM program for these pipelines should reflect the relative simplicity of these types of pipelines.

2. Elements. A written integrity management plan must address, at a minimum, the following elements:

A. Knowledge. The operator must demonstrate knowledge of its pipeline, which, to the extent known, should include the approximate location and material of its pipeline. The operator must identify additional information needed and provide a plan for gaining knowledge over time through normal activities conducted on the pipeline (e.g., design, construction, operations, or maintenance activities);

B. Identify threats. The operator must consider, at minimum, the following categories of threats (existing and potential): corrosion, natural forces, excavation damage, other outside force damage, material or weld failure, equipment failure, and incorrect operation;

C. Rank risks. The operator must evaluate the risks to its pipeline and estimate the relative importance of each identified threat;

D. Identify and implement measures to mitigate risks. The operator must determine and implement measures designed to reduce the risks from failure of its pipeline;

E. Measure performance, monitor results, and evaluate effectiveness. The operator must monitor, as a performance measure, the number of leaks eliminated or repaired on its pipeline and their causes; and

F. Periodic evaluation and improvement. The operator must determine the appropriate period for conducting IM program evaluations based on the complexity of its pipeline and

changes in factors affecting the risk of failure. An operator must re-evaluate its entire program at least every five (5) years. The operator must consider the results of the performance monitoring in these evaluations.

3. Records. The operator must maintain, for a period of at least ten (10) years, the following records:

A. A written IM plan in accordance with this subsection, including superseded IM plans;

B. Documents supporting threat identification; and

C. Documents showing the location and material of all piping and appurtenances that are installed after the effective date of the operator's IM program and, to the extent known, the location and material of all pipe and appurtenances that were existing on the effective date of the operator's program.

*[(17)]***(18)** Waivers of Compliance. Upon written request to the secretary of the commission, the commission, by authority order and under such terms and conditions as the commission deems appropriate, may waive in whole or part compliance with any of the requirements contained in this rule. Waivers will be granted only on a showing that gas safety is not compromised. If the waiver request would waive compliance with a federal requirement in 49 CFR part 192, additional actions shall be taken in accordance with 49 USC 60118 **except when the provisions of subsection (17)(G) apply**.

Appendix B to 4 CSR 240-40.030
Appendix B—Qualification of Pipe

I. Listed Pipe Specifications.

API 5L—Steel pipe, "API Specification for Line Pipe" (incorporated by reference in 49 CFR 192.7 and adopted in **subsection** (1)(D)).

ASTM A 53/A53M—Steel pipe, "Standard Specification for Pipe, Steel Black and Hot-Dipped, Zinc-Coated, Welded and Seamless" (incorporated by reference in 49 CFR 192.7 and adopted in **subsection** (1)(D)).

ASTM A 106—Steel pipe, "Standard Specification for Seamless Carbon Steel Pipe for High Temperature Service" (incorporated by reference in 49 CFR 192.7 and adopted in **subsection** (1)(D)).

ASTM A 333/A 333M—Steel pipe, "Standard Specification for Seamless and Welded Steel Pipe for Low Temperature Service" (incorporated by reference in 49 CFR 192.7 and adopted in **subsection** (1)(D)).

ASTM A 381—Steel pipe, "Standard Specification for Metal-Arc-Welded Steel Pipe for Use with High-Pressure Transmission Systems" (incorporated by reference in 49 CFR 192.7 and adopted in **subsection** (1)(D)).

ASTM A 671—Steel pipe, "Standard Specification for Electric-Fusion-Welded Pipe for Atmospheric and Lower Temperatures" (incorporated by reference in 49 CFR 192.7 and adopted in **subsection** (1)(D)).

ASTM A 672—Steel pipe, "Standard Specification for Electric-Fusion-Welded Steel Pipe for High-Pressure Service at Moderate Temperatures" (incorporated by reference in 49 CFR 192.7 and adopted in **subsection** (1)(D)).

ASTM A 691—Steel pipe, "Standard Specification for Carbon and Alloy Steel Pipe, Electric-Fusion-Welded for High Pressure Service at High Temperatures" (incorporated by reference in 49 CFR 192.7 and adopted in **subsection** (1)(D)).

ASTM D 2513-**99**—Thermoplastic pipe and tubing, "Standard Specification for Thermoplastic Gas Pressure Pipe, Tubing, and Fittings" (incorporated by reference in 49 CFR 192.7 and adopted in **subsection** (1)(D)).

Appendix E to 4 CSR 240-40.030
Appendix E. Table of Contents—Safety Standards—Transportation of Gas by Pipeline.

4 CSR 240-40.030(8) Customer Meters, Service Regulators, and Service Lines

(P) Excess Flow Valve *[Customer Notification]* **Installation**. (192.383)

4 CSR 240-40.030(12) Operations

(T) Control Room Management. (192.631)

4 CSR 240-40.030(17) Gas Distribution Pipeline Integrity Management (IM)

(A) What Definitions Apply to this Section? (192.1001)

(B) What Do the Regulations in this Section Cover? (192.1003)

(C) What Must a Gas Distribution Operator (Other than a Master Meter Operator) Do to Implement this Section? (191.1005)

(D) What Are the Required Elements of an Integrity Management Plan? (192.1007)

(E) What Must an Operator Report When a Mechanical Fitting Fails? (192.1009)

(F) What Records Must an Operator Keep? (192.1011)

(G) When May an Operator Deviate from Required Periodic Inspections Under this Rule? (192.1013)

(H) What Must a Master Meter Operator Do to Implement this Section? (192.1015)

4 CSR 240-40.030*[(17)]***(18) Waivers of Compliance.**

AUTHORITY: sections 386.250, 386.310, and 393.140, RSMo 2000. Original rule filed Feb. 23, 1968, effective March 14, 1968. For intervening history, please consult the ***Code of State Regulations****. Amended: Filed Nov. 29, 2012.*

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars ($500) in the aggregate.

NOTICE TO SUBMIT COMMENTS AND NOTICE OF PUBLIC HEARING: Anyone may file comments in support of or in opposition to this proposed amendment with the Missouri Public Service Commission, Steven C. Reed, Secretary of the Commission, PO Box 360, Jefferson City, MO 65102. To be considered, comments must be received at the commission's offices on or before February 1, 2013, and should include a reference to Commission Case No. GX-2013-0092. Comments may also be submitted via a filing using the commission's electronic filing and information system at http://www.psc.mo.gov/efis.asp. A public hearing regarding this proposed amendment is scheduled for February 5, 2013, at 10:00 a.m., in Room 305 of the Governor Office Building, 200 Madison St., Jefferson City, Missouri. Interested persons may appear at this hearing to submit additional comments and/or testimony in support of or in opposition to this proposed amendment, and may be asked to respond to commission questions.

SPECIAL NEEDS: Any persons with special needs as addressed by the Americans with Disabilities Act should contact the Missouri Public Service Commission at least ten (10) days prior to the hearing at one (1) of the following numbers: Consumer Services Hotline 1 (800) 392-4211 (voice) or Relay Missouri at 711.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 240—Public Service Commission
Chapter 40—Gas Utilities and Gas Safety Standards

PROPOSED AMENDMENT

4 CSR 240-40.080 Drug and Alcohol Testing. The commission is amending sections (1) and (6) of this rule.

PURPOSE: This amendment proposes to amend the rule to conform to amendments of 49 CFR parts 40 and 199.

(1) As set forth in the *Code of Federal Regulations* (CFR) dated October 1, *[2006]* **2011**, 49 CFR parts 40 and 199 are incorporated by reference and made a part of this rule. This rule does not incorporate any subsequent amendments to 49 CFR parts 40 and 199. The *Code of Federal Regulations* is published by the Office of the Federal Register, National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740-6001. The October 1, *[2006]* **2011,** version of 49 CFR parts 40 and 199 is available at *[www.access.gpo.gov/nara/cfr/cfr-table-search.html]* **www.gpo.gov/fdsys/search/showcitation.action**.

(6) The federal procedures for transportation workplace drug and alcohol testing programs (49 CFR part 40) adopted by reference in section (3) of this rule contain subparts on administrative provisions; employer responsibilities; urine collection personnel; collection sites, forms, equipment**,** and supplies used in DOT urine collections; urine specimen collections; drug testing laboratories; medical review officers and the verification process; split specimen tests; problems in drug tests; alcohol testing personnel; testing sites, forms, equipment, and supplies used in alcohol testing; **alcohol screening tests;** alcohol confirmation tests; problems in alcohol testing; substance abuse professionals and the return-to-duty process; confidentiality and release of information; roles and responsibilities of service agents; and public interest exclusions.

AUTHORITY: sections 386.250, 386.310, and 393.140, RSMo 2000. Original rule filed Nov. 29, 1989, effective April 2, 1990. Rescinded and readopted: Filed Jan. 9, 1996, effective Aug. 30, 1996. Rescinded and readopted: Filed April 9, 1998, effective Nov. 30. 1998. Amended: Filed Oct. 15, 2007, effective April 30, 2008. Amended: Filed Nov. 29, 2012.

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars ($500) in the aggregate.

NOTICE TO SUBMIT COMMENTS AND NOTICE OF PUBLIC HEARING: Anyone may file comments in support of or in opposition to this proposed amendment with the Missouri Public Service Commission, Steven C. Reed, Secretary of the Commission, PO Box 360, Jefferson City, MO 65102. To be considered, comments must be received at the commission's offices on or before February 1, 2013, and should include a reference to Commission Case No. GX-2013-0092. Comments may also be submitted via a filing using the commission's electronic filing and information system at http://www.psc.mo.gov/efis.asp. A public hearing regarding this proposed amendment is scheduled for February 5, 2013, at 10:00 a.m., in Room 305 of the Governor Office Building, 200 Madison St., Jefferson City, Missouri. Interested persons may appear at this hearing to submit additional comments and/or testimony in support of or in opposition to this proposed amendment, and may be asked to respond to commission questions.

SPECIAL NEEDS: Any persons with special needs as addressed by the Americans with Disabilities Act should contact the Missouri Public Service Commission at least ten (10) days prior to the hearing at one (1) of the following numbers: Consumer Services Hotline 1 (800) 392-4211 (voice) or Relay Missouri at 711.

Title 5—DEPARTMENT OF ELEMENTARY AND SECONDARY EDUCATION
Division 20—Division of Learning Services
Chapter 100—Office of Quality Schools

PROPOSED RULE

5 CSR 20-100.260 Standards for Charter Sponsorship

PURPOSE: This rule establishes the standards and indicators for charter sponsorship as required by the Missouri Department of Elementary and Secondary Education. These standards serve as the foundation for the sponsor application process as required by section 160.403, RSMo, and the evaluation process for sponsors required in section 160.400.17(1), RSMo.

(1) Standard 1—Sponsor Commitment and Capacity. A quality sponsor recognizes that chartering is a means to foster excellent schools that meet identified needs, creates organizational structures to facilitate meeting these needs, and commits human and financial resources necessary to conduct its sponsoring duties effectively and efficiently. The sponsor is expected to meet the following:

(A) Employs, contracts for services, or seeks expertise in other ways to ensure capacity to carry out all sponsoring activities essential to charter school oversight (including, but not limited to education leadership, curriculum, instruction, assessment, special education, federal programs, performance accountability, law, finance, and nonprofit governance);

(B) Retains records showing that all individuals working in a sponsor's office and/or in the capacity of sponsor who have any contact with students complete a criminal background check and Missouri's Family Care Safety Registry (FCSR) check as outlined in section 168.133.1, RSMo;

(C) Provides capacity within their organization to review all data for charter schools in the Missouri Comprehensive Data System (MCDS) as outlined in section 160.400.11(5), RSMo;

(D) Ensures development of policies and procedures as outlined by section 160.400.16(1)–(6), RSMo;

(E) Provides an annual report showing that ninety percent (90%) of state funds received for sponsoring are used to support charter school operations and compliance as outlined in section 160.400.11, RSMo; and

(F) Ensure capacity for intervention purposes when charter sponsors have two (2) or more low performing charter schools, as verified by their Annual Performance Reports (APR), before expanding their charter portfolio.

(2) Standard 2—Application Process and Decision Making. A quality sponsor implements a thorough application process that includes clear application and guidance; follows fair, transparent procedures and rigorous criteria; and grants only those charter applications that demonstrate a strong capacity to establish and operate a quality charter school. The sponsor shall implement the following:

(A) Implements a thorough charter application process as outlined in section 160.400.11(2), RSMo, including the items as stated in section 160.405.1(1)–(17), RSMo;

(B) Maintains a consistent policy for accepting, approving, and denying charter applications while providing a timeline for submittal and approval/denial;

(C) Provides evidence of accountability regarding stable fiscal and organizational performance included in the charter application

process:

1. Budget assumptions with balanced budgets; and

2. Positive cash flow reserve funds;

(D) Advises charter applicants of the meaning of local education agency (LEA) status as it concerns the operation of the charter school as permitted in section 160.415.4, RSMo;

(E) For any school contracting with a third-party provider for education design and operation or management, include additional contractual provisions that ensure rigorous, independent contract oversight by the charter governing board and the school's financial independence from the external provider;

(F) Meets the Missouri Department of Elementary and Secondary Education's (department) timelines by submitting to the State Board of Education (board) any new charter applications before October 1 of the year prior to the proposed opening date of the charter school. Renewal applications must be submitted before January 1 of the year that the charter is scheduled to be renewed; and

(G) Submit an electronic copy of the approved charter for department files.

(3) Standard 3—Board Support. A quality sponsor recognizes the need to offer support relating to training, organization, ethical conduct, knowledge, commitment, compliance, leadership oversight, contract management, accountability, transparency, and the interpretation of the Missouri public charter school statutes/rules for charter school board(s). The sponsor shall recognize the following:

(A) Ensures charter board members have training to fulfill their position;

(B) Place charter schools on probation, and/or revoke or nonrenew a school's charter for poor governance if the charter school board does not follow statutory requirements, correct violations of statutory requirements, or continue to repeat the same violations, including, but not limited to the following:

1. The charter board retains status as a Missouri non-profit corporation as outlined in section 160.400.7, RSMo;

2. Charter board members submit ethics commission paperwork annually as outlined in sections 105.483 and 105.492, RSMo;

3. Charter boards have policies in place to prevent conflict of interests with retaining contracts with the charter school as outlined in section 160.400.15, RSMo; and

4. All charter board members have criminal background and FCSR checks as outlined in section 160.400.14, RSMo;

(C) Demonstrates oversight of charter boards in a variety of ways (reviewing board minutes, attending board meetings, and verifying reporting processes); and

(D) Ensures charter school board and committee business is conducted as outlined in the Missouri sunshine laws in sections 610.010–610.028, RSMo.

(4) Standard 4—Academic Performance. A quality sponsor will ensure state performance standards defined by the department are included in the sponsor/charter contract. The sponsor shall ensure the following:

(A) Ensures that performance contracts are aligned to state standards which include the following as outlined in section 160.405.4(6)(a), RSMo:

1. Proficiency rate;

2. Missouri Assessment Program (MAP) Performance Index;

3. Attendance rate; and

4. Graduation rate, if applicable;

(B) Mandates intervention based on performance deficiencies as outlined in section 160.405.8(1)(a), RSMo;

(C) Ensures clear consequences for failure to meet requirements and outcomes set in the sponsor/charter contract; and

(D) Not approve additional sites or expansion of grade levels for a charter school identified as persistently low achieving as verified by its APR or a school that has been placed on probation by the sponsor.

(5) Standard 5—Fiscal Management. A quality sponsor monitors the charter school performance management and financial actions that support a solvent fiscal status. The sponsor shall monitor the following:

(A) A charter school identified as financially stressed ensures that a budget and education plan be developed by the charter school as outlined in section 160.417.3, RSMo. The department may withhold any payment of financial aid due to the charter school until such time as the charter school and sponsor have fully complied as outlined in section 160.417.5, RSMo;

(B) Charter schools that have been notified that expenditures for the preceding fiscal year exceed receipts, must take action to examine whether this has occurred due to recurring costs. If this is the case then the sponsor ensures that a budget and financial plan will be developed by the charter as outlined in section 160.417.3, RSMo;

(C) Reviews annual financial audits of schools, conducted by a qualified independent auditor as stated in 160.405.4(4), RSMo;

(D) Ensures that adequate financial controls are in place to assure that revenue received for operation of the charter school are expended for expenses related to the operation of the charter school—

1. A requirement that all checks be signed by at least two (2) members of the charter board, one (1) of which must be the treasurer of the board;

2. The treasurer of the board must approve all bills before they are paid; and

3. The bank account where state funds are deposited must be established and under the control of the charter board. If a management company is contracted, personnel associated with the company should not have direct access;

(E) Ensures charter schools show fiscal management of federal grant programs in accordance with terms outlined in *Fiscal Guidance for Federal Grant Programs*;

(F) Ensures charter schools have a procurement process in place as required by the *Code of Federal Regulations* 34 CFR 80.36;

(G) Ensures that the Annual Secretary of the Board Report (ASBR) and the annual audit are submitted to the department in the time frame outlined by Missouri statutes and that these documents are not compiled by the same auditing service. The department may withhold any payment of financial aid due to the charter school until such time as the charter school and sponsor have fully complied as outlined in section 160.415.5, RSMo;

(H) Ensures the annual audit summary is published as outlined in section 165.121.5, RSMo; and

(I) Ensures charter schools utilize the coding procedures prescribed in the *Missouri Financial Accounting Manual* as outlined in section 160.405.1(10), RSMo.

(6) Standard 6—Reporting. A quality sponsor ensures all reports/data required by Missouri and federal law are completed and submitted in a timely manner for the department and/or legislature. The sponsor shall ensure the following:

(A) Timely, accurate, and complete submission of all data required as outlined in section 160.400.17(1), RSMo;

(B) Charter schools locally maintain student records that can be transferred electronically for state and federal program reporting requirements;

(C) Charter schools retain necessary records as required by the general record retention schedule and the public school record retention schedule as authorized by section 109.255, RSMo;

(D) That an annual report per charter school is submitted to the joint committee on education as outlined in section 160.400.12, RSMo;

(E) Sponsor ensures charter schools adopt policies consistent with the Family Educational Rights and Privacy Act (FERPA) and the Health Insurance Portability and Accountability Act (HIPAA) guidelines to the extent they are applicable;

(F) Appropriate charter personnel have access to the Missouri Student Information System (MOSIS) and core data; and

(G) That approve changes to a charter throughout the term of the charter will be submitted within thirty (30) days of approval and an electronic copy will be submitted to the department reflecting approved changes.

(7) Standard 7—Oversight and Evaluation. A quality sponsor conducts oversight and evaluates performance for both federal and state compliance. The sponsor shall ensure the following:

(A) Non-discrimination of student admission as required by federal and state laws;

(B) The charter board has a policy to promptly address parent, student, and community concerns at the local level;

(C) Monitors data related to certification and background checks and has policy/intervention plans to address when schools are not in compliance;

(D) That the following programs are in compliance with all federal statutes and guidelines:

1. Special education;
2. All title programs;
3. Vocational/career education;
4. Food service; and
5. Services for foster, homeless, migrant, and English language learner students;

(E) All eligible students participate in the Missouri MAP; and

(F) Charter schools enrolling eligible students under the urban voluntary transfer program (St. Louis metropolitan area) are reported accurately as outlined in section 160.410.1(2), RSMo.

(8) Standard 8—Intervention, Renewal, Revocation, and Closure Decision Making. A quality sponsor designs and implements a transparent and rigorous process that uses comprehensive academic, financial, and operational management data to make decisions about intervention, renewal, revocation, and closure. The sponsor shall implement the following:

(A) Develops and maintains policies that have been adopted for the following areas:

1. Establishes and makes known to schools at the outset an intervention policy stating the general conditions that may trigger intervention and the types of actions and consequences that may ensue;

2. Base the renewal process and renewal decisions on thorough analyses of a comprehensive body of objective evidence defined by the performance framework in the charter contract. Sponsors grant renewal only to schools that have achieved the standards and targets stated in the charter contract, are organizationally and fiscally viable, and have been diligent to the terms of the contract and applicable law;

3. Revokes a charter during the charter term if there is clear evidence of extreme underperformance or violation of law or the public trust that imperils students or public funds; and

4. In the event of a school closure, oversees and works with the school governing board and leadership in carrying out a detailed closure protocol that ensures timely notification to parents; orderly transition of students and student records to new schools; and disposition of school funds, property, and assets in accordance with law as outlined in section 160.400.17(1), RSMo.

AUTHORITY: sections 161.092 and 160.400–160.425, RSMo Supp. 2012. Original rule filed Dec. 3, 2012.

PUBLIC COST: The estimated cost of this proposed rule to sponsors is three hundred sixty thousand dollars ($360,000), while the cost to state agencies is two hundred sixty-one thousand six hundred ninety-two dollars ($261,692) as outlined in section 160.400.11, RSMo. The estimated total cost could be six hundred twenty-one thousand six hundred ninety-two dollars ($621,692). All costs, including salaries, are included in the six hundred twenty-one thousand six hundred ninety-two dollars ($621,692) estimate. Public institutions who serve as a sponsor already receive funds to defray expenses they incur.

PRIVATE COST: The cost of this proposed rule to sponsors is outlined in section 160.400.11, RSMo. The estimated costs could be up to eighty thousand dollars ($80,000) per sponsor, but may be less if a sponsor has fewer schools in their portfolio. All costs, including salaries, are included in the eighty thousand dollars ($80,000) estimate. Private institutions who serve as a sponsor already receive funds to defray expenses they incur.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in the support of or in opposition to this proposed rule with the Department of Elementary and Secondary Education, Attention: Margie Vandeven, Assistant Commissioner, Office of Quality Schools, PO Box 480, Jefferson City, MO 65102-0480 or by email at: webreplyimprcharter@dese.mo.gov. To be considered, comments must be received within thirty (30) days after publication of this notice in the ***Missouri Register****. No public hearing is scheduled.*

FISCAL NOTE
PUBLIC COST

I. Department Title: Title 5 – Department of Elementary and Secondary Education
Division Title: Division 20 – Division of Learning Services
Chapter Title: Chapter 100 – Office of Quality Schools

Rule Number and Name:	**5 CSR 20-100.260 Standards for Charter Sponsorship**
Type of Rulemaking:	**Proposed Rule**

II. SUMMARY OF FISCAL IMPACT

Affected Agency or Political Subdivision	Estimated Cost of Compliance in the Aggregate
State Agencies	$261,692
Colleges/Universities	$360,000
School Districts	1.5% ADA, No Cost - $0
Total:	$621,692

III. Worksheet

State Agencies: When the fiscal note for SB 576 was compiled; the department projected five (5) full-time employees (FTE) to implement the responsibilities associated with this new charter law.

Type of Staff	Salary	Benefits	Total
3.5 Professional Staff	$37,968	$19,760	$202,048
1.5 Support Staff	$26,160	$13,603	$59,644
Total:	$172,128	$89,564	$261,692

Colleges/Universities: When the fiscal note for SB 576 was compiled, current public sponsors were surveyed to estimate costs to develop, implement, and maintain the provisions outlined for charter schools. The sponsors with large numbers of LEAs, (five (5) or more), proposed an estimate of $80,000 per year providing one (1) FTE for most institutions. Similar estimates were received for HB 473 during the 2011 session. Based on this information, Colleges/Universities would require:

Number of LEAs Sponsored	Number of FTE	Amount
1	0.25	$20,000
2 or 3	0.50	$40,000
4	0.75	$60,000
5 or more	1.0	$80,000

Current sponsors totals:

Name of Sponsor	Number of LEAs	Amount
Metropolitan Community College	1	$20,000
University of Central Missouri	9	$80,000
University of Missouri Columbia	4	$60,000
University of Missouri Kansas City	11	$80,000
University of Missouri St. Louis	5	$80,000
Missouri University of Science & Technology	1	$20,000
South East Missouri State University	1	$20,000
Total:	32	$360,000

School Districts: Those who would sponsor charter schools in the future would have the infrastructure in place for development and monitoring. The 1.5% ADA that provides sponsorship funds (section 160.400 17, RSMo) would be sufficient to cover any additional expenses.

IV. ASSUMPTIONS

The cost estimate for state agencies is based on the fiscal note prepared for SB 576.

The cost estimate for colleges/universities and school districts are based on the survey results received when fiscal note for SB 576 was complied in January 2012.

FISCAL NOTE
PRIVATE COST

I. Department Title: Title 5 – Department of Elementary and Secondary Education
Division Title: Division 20 – Division of Learning Services
Chapter Title: Chapter 100 – Office of Quality Schools

Rule Number and Name:	**5 CSR 20-100.260 Standards for Charter Sponsorship**
Type of Rulemaking:	**Proposed Rule**

II. SUMMARY OF FISCAL IMPACT

Classification by types of the business entities which would likely be effected:	Estimate in the aggregate as to the cost of compliance with the rule by the affected entities:
Colleges/Universities	$80,000

III. WORKSHEET

Colleges/Universities: When the fiscal note for SB 576 was compiled, current private sponsors were surveyed to estimate costs to develop, implement, and maintain the provisions outlined for charter schools. The sponsors with larger numbers of LEAs, five (5) or more, proposed an estimate of $80,000 and similar estimates were received for HB 473 during the 2011 session. Based on this information, Colleges/Universities would require:

Number of LEAs	Number of FTE	Amount
1	0.25	$20,000
2 or 3	0.50	$40,000
4	0.75	$60,000
5 or more	1.0	$80,000

Current sponsors totals:

Name of Sponsor	Number of LEAs	Amount
Lindenwood University	1	$20,000
Saint Louis University	3	$40,000
Washington University	1	$20,000
Total:	5	$80,000

IV. ASSUMPTIONS

The cost estimate for colleges/universities is based on the survey results received when fiscal note for SB 576 was compiled in January 2012.

Title 5—DEPARTMENT OF ELEMENTARY AND SECONDARY EDUCATION
Division 20—Division of Learning Services
Chapter 400—Office of Educator Quality

PROPOSED AMENDMENT

5 CSR 20-400.270 Fees. The State Board of Education is amending sections (1) and (3) and deleting section (2).

PURPOSE: This amendment is to update the assessment of processing fees.

(1) *[A fee,]* **The State Board of Education (board) shall establish fees** sufficient to recover costs of processing and issuing certificates of license to teach*[, will be charged to applicants who completed an approved teacher preparation program in a state other than Missouri. All applicants or certificate of license to teach holders may be charged additional fees to recover costs associated with the issuance of certificates of license to teach, other than the initial professional certificate of license to teach]*. **All applicants for a certificate of license to teach shall submit the approved application accompanied by the required fee.**

[(2) The following fees are established by the State Board of Education (board) and are payable in the form of a check or money order to the Treasurer, State of Missouri:

(A) Application for a Certificate of License to Teach (Individuals who completed a teacher preparation program from a non-Missouri school)	*$50.00*
(B) Application for a Career Continuous Professional Certificate of License to Teach (Individuals who completed a teacher preparation program from a non-Missouri school and/or individuals who hold an initial professional certificate of license to teach)	*$35.00*
(C) Reprint or Duplicate Certificate of License to Teach	*$25.00*
(D) Additional Certificate for the Addition of an Advanced Degree	*$25.00*
(E) Copy Cost (per page)	*$ .50*
(F) Research Fee (per hour)	*$35.00*

(G) Fingerprint Card Check—Amount determined by the Missouri State Highway Patrol and/or the Federal Bureau of Investigation.

(H Missouri Open Records Check—Amount determined by the Missouri State Highway Patrol.]

*[(3)]***(2)** All fees are nonrefundable.

AUTHORITY: sections 168.011, 168.405, and 168.409, RSMo 2000, and ***sections*** *161.092, 168.021, 168.071, 168.081, and 168.400, RSMo Supp. [2003]* ***2012****. This rule previously filed as 5 CSR 80-800.370. Original rule filed April 26, 2000, effective Nov. 30, 2000. Amended: Filed Aug. 13, 2002, effective March 30, 2003. Amended: Filed Sept. 12, 2003, effective April 30, 2004. Moved to 5 CSR 20-400.270, effective Aug. 16, 2011. Amended: Filed Dec. 3, 2012.*

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars ($500) in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Department of Elementary and Secondary Education, Attention: Dr. Karla Eslinger, Assistant Commissioner, Office of Educator Quality, PO Box 480, Jefferson City, MO 65102-0480 or by email to educatorquality@dese.mo.gov. To be considered, comments must be received within thirty (30) days after publication of this notice in the ***Missouri Register****. No public hearing is scheduled.*

This section will contain the final text of the rules proposed by agencies. The order of rulemaking is required to contain a citation to the legal authority upon which the order or rulemaking is based; reference to the date and page or pages where the notice of proposed rulemaking was published in the *Missouri Register*; an explanation of any change between the text of the rule as contained in the notice of proposed rulemaking and the text of the rule as finally adopted, together with the reason for any such change; and the full text of any section or subsection of the rule as adopted which has been changed from that contained in the notice of proposed rulemaking. The effective date of the rule shall be not less than thirty (30) days after the date of publication of the revision to the *Code of State Regulations*.

The agency is also required to make a brief summary of the general nature and extent of comments submitted in support of or opposition to the proposed rule and a concise summary of the testimony presented at the hearing, if any, held in connection with the rulemaking, together with a concise summary of the agency's findings with respect to the merits of any such testimony or comments which are opposed in whole or in part to the proposed rule. The ninety- (90-) day period during which an agency shall file its order of rulemaking for publication in the *Missouri Register* begins either: 1) after the hearing on the proposed rulemaking is held; or 2) at the end of the time for submission of comments to the agency. During this period, the agency shall file with the secretary of state the order of rulemaking, either putting the proposed rule into effect, with or without further changes, or withdrawing the proposed rule.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 10—Air Conservation Commission
Chapter 6—Air Quality Standards, Definitions, Sampling and Reference Methods and Air Pollution Control Regulations for the Entire State of Missouri

ORDER OF RULEMAKING

By the authority vested in the Missouri Air Conservation Commission under section 643.050, RSMo Supp. 2012, the commission amends a rule as follows:

10 CSR 10-6.020 is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on August 15, 2012 (37 MoReg 1222–1243). Those sections with changes are reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The Missouri Department of Natural Resources' Air Pollution Control Program received two (2) comments from two (2) sources on this rule amendment: an attorney with Newman, Comley & Ruth P.C. and the department's Air Pollution Control Program.

COMMENT #1: An attorney with the Newman, Comley & Ruth firm suggested the rule-specific definition of the term modification is significantly different from the definition currently in 10 CSR 10-6.020 and should remain separate and apart in 10 CSR 10-6.165, Restriction of Emission of Odors to avoid confusion.
RESPONSE AND EXPLANATION OF CHANGE: The new practice of consolidating all 10 CSR 10 rule definitions into 10 CSR 10-6.020, Definitions and Common Reference Tables requires every definition from each rule to be located in 10 CSR 10-6.020, resulting in a complete compilation of all air rule definitions. This new approach to definitions was discussed with, and supported by, the Air Program Advisory Forum at its May 27, 2010, meeting. In this rulemaking, the 10 CSR 10-6.165 rule-specific definition of modification was simply added without change to the existing 10 CSR 10-6.020 general definition of modification. There are numerous similar cases of terms defined uniquely for specific rule applications in addition to a general definition for the term. In cases where these circumstances occur, the rule-specific definition as proposed is offset with a distinguishing statement (e.g., for the purpose of, followed by the specific rule number). The department's Air Pollution Control Program acknowledges this format could cause confusion by the appearance that the rule-specific and general definitions for a particular term are a single definition as noted in the comment. As a result of this comment, the format for the definition of modification and other terms with similar circumstances have been changed by moving each rule-specific definition and general definition into a separate subparagraph under the term. This formatting change is intended to clarify that the general definition of a term is in no way part of a rule-specific definition and that each definition stands alone.

COMMENT #2: The department's Air Pollution Control Program identified minor typographical errors in the proposed rulemaking text published in the *Missouri Register* on August 15, 2012.
RESPONSE AND EXPLANATION OF CHANGE: As a result of this comment, minor corrections were made in subsections (2)(C), (2)(M), and (3)(C).

10 CSR 10-6.020 Definitions and Common Reference Tables

(2) Definitions.

(A) All terms beginning with A.

1. Abatement project designer—An individual who designs or plans Asbestos Hazard Emergency Response Act (AHERA) asbestos abatement.

2. ABS plastic solvent welding—A process to weld acrylonitrile-butadiene-styrene pipe.

3. Account certificate of representation—The completed and signed submission for certifying the designation of a nitrogen oxides (NO_x) authorized account representative for an affected unit or a group of identified affected units who is authorized to represent the owners or operators of such unit(s) and of the affected units at such source(s) with regard to matters under a NO_x trading program.

4. Account holder—Any person that chooses to participate in the emission reduction credit (ERC) program by generating, buying, selling, or trading ERCs.

5. Account number—The identification number given to each NO_x allowance tracking system account.

6. Acid rain emissions limitation—As defined in 40 CFR 72.2, a limitation on emissions of sulfur dioxide or nitrogen oxides under the Acid Rain Program under Title IV of the Clean Air Act.

7. Act—The Clean Air Act, 42 U.S.C. 7401. References to the word Title pertain to the titles of the Clean Air Act Amendments of 1990, P.L. 101–549.

8. Active collection system—A gas collection system that uses gas mover equipment.

9. Active landfill—A landfill in which solid waste is being placed or a landfill that is planned to accept waste in the future.

10. Activity level—Defined as follows:

A. For the purpose of 10 CSR 10-6.410, activity level is the amount of activity at a source measured in terms of production, use, raw materials input, vehicle miles traveled, or other similar units that have a direct correlation with the economic output of the source and

is not affected by changes in the emissions rate (i.e., mass per unit of activity); and

B. For all other purposes, activity level means a measurable factor or parameter that relates directly or indirectly to the emissions of an air pollution source. Depending on the source category, activity information includes, but is not limited to, the amount of fuel combusted, raw material processed, product manufactured, or material handled or processed.

11. Actual emissions—The actual rate of emissions of a pollutant from a source operation is determined as follows:

A. Actual emissions as of a particular date shall equal the average rate, in tons per year, at which the source operation or installation actually emitted the pollutant during the previous two (2)-year period and which represents normal operation. A different time period for averaging may be used if the director determines it to be more representative. Actual emissions shall be calculated using actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period;

B. The director may presume that source-specific allowable emissions for a source operation or installation are equivalent to the actual emissions of the source operation or installation; and

C. For source operations or installations, which have not begun normal operations on the particular date, actual emissions shall equal the potential emissions of the source operation or installation on that date.

12. Adhesion primer—A coating that is applied to a polyolefin part to promote the adhesion of a subsequent coating. An adhesion primer is clearly identified as an adhesion primer or adhesion promoter on its material safety data sheet.

13. Adhesive—Any chemical substance that is applied for the purpose of bonding two (2) surfaces together other than by mechanical means. For the purpose of 10 CSR 10-5.330, an adhesive is considered a surface coating.

14. Adhesive application process—A series of one (1) or more adhesive applicators and any associated drying area and/or oven wherein an adhesive is applied, dried, and/or cured. An application process ends at the point where the adhesive is dried or cured, or prior to any subsequent application of a different adhesive. It is not necessary for an application process to have an oven or flash-off area.

15. Adhesive primer—A product intended by the manufacturer for application to a substrate, prior to the application of an adhesive, to provide a bonding surface.

16. Administrator—Defined as follows:

A. For the purpose of 10 CSR 10-6.360, administrator is the administrator of the U.S. Environmental Protection Agency or the administrator's duly-authorized representative; and

B. For all other purposes, administrator means the regional administrator for Region VII, U.S. Environmental Protection Agency.

17. Adsorption cycle—The period during which the adsorption system is adsorbing and not desorbing.

18. Adverse impact on visibility—The visibility impairment which interferes with the protection, preservation, management, or enjoyment of the visitor's visual experience of a Class I area, which is an area designated as Class I in 10 CSR 10-6.060(11)(A) Table 1. This determination must be made on a case-by-case basis taking into account the geographic extent, intensity, duration, frequency, and time of visibility impairments and how these factors correlate with the times of visitor use of the Class I area and the frequency and timing of natural conditions that reduce visibility.

19. Aerospace manufacture and/or rework facility—Any installation that produces, reworks, or repairs in any amount any commercial, civil, or military aerospace vehicle or component.

20. Aerospace vehicle or component—Any fabricated part, processed part, assembly of parts, or completed unit, with the exception of electronic components, of any aircraft.

21. Affected federal land manager—For the purpose of 10 CSR 10-6.300, the federal agency or the federal official charged with direct responsibility for management of an area designated as Class I under the Clean Air Act (42 U.S.C. 7472) that is located within one hundred kilometers (100 km) of the proposed federal action.

22. Affected source—Defined as follows:

A. For the purpose of 10 CSR 10-5.530, affected source is a wood furniture manufacturing facility that meets the criteria listed in subsections (1)(A) and (1)(B) of 10 CSR 10-5.530; and

B. For all other purposes, affected source means a source that includes one (1) or more emission units subject to emission reduction requirements or limitations under Title IV of the Act.

23. Affected states—All states contiguous to the permitting state whose air quality may be affected by the modification, renewal, or issuance of, or is within fifty (50) miles of a source subject to permitting under Title V of the Act.

24. Affected unit—A unit that is subject to emission reduction requirements or limitations under Title IV of the Act.

25. Affiliate—Any person, including an individual, corporation, service company, corporate subsidiary, firm, partnership, incorporated or unincorporated association, political subdivision including a public utility district, city, town, county, or a combination of political subdivisions, that directly or indirectly, through one (1) or more intermediaries, controls, is controlled by, or is under common control with the regulated electrical corporation.

26. Air cleaning device—Any method, process, or equipment which removes, reduces, or renders less obnoxious air contaminants discharged into the ambient air.

27. Air contaminant—Any particulate matter or any gas or vapor or any combination of them.

28. Air contaminant source—Any and all sources of emission of air contaminants whether privately or publicly owned or operated.

29. Air-dried coating—The coatings which are dried by the use of air or forced warm air at temperatures up to ninety degrees Celsius (90 °C) (one hundred ninety-four degrees Fahrenheit (194 °F)).

30. Air emissions reporting rule (AERR)—The U.S. Environmental Protection Agency rule that finalized changes to emission reporting requirements in 40 CFR 51 (*Federal Register*, December 18, 2008).

31. Air pollutant—Agent, or combination of agents, including any physical, chemical, biological, radioactive (including source material, special nuclear material, and by-product material) substance, or matter which is emitted into or otherwise enters the ambient air. Such term includes any precursors to the formation of any air pollutant, to the extent the administrator of the U.S. Environmental Protection Agency, or the administrator's duly authorized representative has identified such precursor(s) for the particular purpose for which the term air pollutant is used.

32. Air pollution—The presence in the ambient air of one (1) or more air contaminants in quantities, of characteristics, and of a duration which directly and approximately cause or contribute to injury to human, plant, or animal life or health, or to property or which unreasonably interfere with the enjoyment of life or use of property.

33. Air pollution alert—The level of an air pollution episode known as an air pollution alert is that condition when the concentration of air contaminants reaches the level at which the first stage control actions are to begin.

34. Air Stagnation Advisory—A special bulletin issued by the National Weather Service entitled Air Stagnation Advisory, which is used to warn air pollution control agencies that stagnant atmospheric conditions are expected which could cause increased concentrations of air contaminants near the ground.

35. Air-tight cleaning system—A degreasing machine that is automatically operated and seals at a differential pressure no greater than one-half (0.5) pound per square inch gauge (psig) during all cleaning and drying cycles.

36. Airless cleaning system—A degreasing machine that is automatically operated and seals at a differential pressure of twenty-five (25) torr (twenty-five millimeters of mercury (25 mmHg) (0.475 pounds per square inch (psi)) or less, prior to the introduction of solvent vapor into the cleaning chamber and maintains differential pressure under vacuum during all cleaning and drying cycles.

37. Alcohol—Refers to isopropanol, isopropyl alcohol, normal propyl alcohol, or ethanol.

38. Alcohol substitutes—Nonalcohol additives that contain volatile organic compounds and are used in the fountain solution.

39. Allocate or allocation—The determination by the director or the administrator of the number of NO_x allowances to be initially credited to a NO_x budget unit or an allocation set-aside.

40. Allowable emissions—The emission rate calculated using the maximum rated capacity of the installation (unless the source is subject to enforceable permit conditions which limit the operating rate or hours of operation, or both) and the most stringent of the following:

A. Emission limit established in any applicable emissions control rule including those with a future compliance date; or

B. The emission rate specified as a permit condition.

41. Allowance—An authorization, allocated to an affected unit by the administrator under Title IV of the Act, to emit, during or after a specified calendar year, one (1) ton of sulfur dioxide (SO_2).

42. Alternate authorized account representative—The alternate person who is authorized by the owners or operators of the unit to represent and legally bind each owner and operator in matters pertaining to the Emissions Banking and Trading Program or any other trading program in place of the authorized account representative.

43. Alternate site analysis—An analysis of alternative sites, sizes, production processes, and environmental control techniques for the proposed source which demonstrates that benefits of the proposed installation significantly outweigh the environmental and social costs imposed as a result of its location, construction, or modification.

44. Alternative method—Any method of sampling and analyzing for an air pollutant that is not a reference or equivalent method but that has been demonstrated to the director's satisfaction to, in specific cases, produce results adequate for a determination of compliance.

45. Ambient air—All space outside of buildings, stacks, or exterior ducts.

46. Ambient air increments—The limited increases of pollutant concentrations in ambient air over the baseline concentration.

47. Ancillary refueling system—Any gasoline-dispensing installation, including related equipment, that shares a common storage tank with an initial fueling system. The purpose of an ancillary refueling system is to refuel in-use motor vehicles equipped with onboard refueling vapor recovery at automobile assembly plants.

48. Animal matter—Any product or derivative of animal life.

49. Anode bake plant—A facility which produces carbon anodes for use in a primary aluminum reduction installation.

50. Antifoulant coating—A coating applied to the underwater portion of a pleasure craft to prevent or reduce the attachment of biological organisms and registered with the U.S. Environmental Protection Agency as a pesticide under the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. Section 136).

51. Antifoulant sealer/tie coating—A coating applied over biocidal antifoulant coating for the purpose of preventing release of biocides into the environment and/or to promote adhesion between an antifoulant and a primer or other antifoulant.

52. Antique aerospace vehicle or component—An aircraft or component thereof that was built at least thirty (30) years ago. An antique aerospace vehicle would not routinely be in commercial or military service in the capacity for which it was designed.

53. Applicability analysis—The process of determining if the federal action must be supported by a conformity determination.

54. Applicable implementation plan or applicable state implementation plan (SIP)—The portion (or portions) of the SIP or most recent revision thereof, which has been approved under section 110(k) of the Act, a federal implementation plan promulgated under section 110(c) of the Act, or a plan promulgated or approved pursuant to section 301(d) of the Act (tribal implementation plan) and which implements the relevant requirements of the Act.

55. Applicable requirement—All of the following listed in the Act:

A. Any standard or requirement provided for in the implementation plan approved or promulgated by the U.S. Environmental Protection Agency through rulemaking under Title I of the Act that implements the relevant requirements, including any revisions to that plan promulgated in 40 CFR 52;

B. Any term or condition of any preconstruction permit issued pursuant to regulations approved or promulgated through rulemaking under Title I, including part C or D of the Act;

C. Any standard or requirement under section 111 of the Act, including section 111(d);

D. Any standard or requirement under section 112 of the Act, including any requirement concerning accident prevention under section 112(r)(7);

E. Any standard or requirement of the Acid Rain Program under Title IV of the Act or the regulations promulgated under it;

F. Any requirements established pursuant to section 504(b) or section 114(a)(3) of the Act;

G. Any standard or requirement governing solid waste incineration under section 129 of the Act;

H. Any standard or requirement for consumer and commercial products under section 183(e) of the Act;

I. Any standard or requirement for tank vessels under section 183(f) of the Act;

J. Any standard or requirement of the program to control air pollution from outer continental shelf sources under section 328 of the Act;

K. Any standard or requirement of the regulations promulgated to protect stratospheric ozone under Title VI of the Act, unless the administrator has determined that these requirements need not be contained in a Title V permit;

L. Any national ambient air quality standard or increment or visibility requirement under part C of Title I of the Act, but only as it would apply to temporary sources permitted pursuant to section 504(e); and

M. Any standard or requirement established in 643.010–643.190, RSMo, of the Missouri Air Conservation Law and rules adopted under them.

56. Approved source—For the purpose of 10 CSR 10-5.120, a source of fuel which has been found by the department director, after the tests as s/he may require, to be in compliance with applicable rules.

57. Aqueous solvent—A solvent in which water is the primary ingredient (greater than eighty percent (80%) by weight or greater than sixty percent (60%) by volume of solvent solution as applied must be water). Detergents, surfactants, and bioenzyme mixtures and nutrients may be combined with the water along with a variety of additives such as organic solvents (e.g., high boiling point alcohols), builders, saponifiers, inhibitors, emulsifiers, pH buffers, and antifoaming agents. Aqueous solutions must have a flash point greater than ninety-three degrees Celsius (93 °C) (two hundred degrees Fahrenheit (200 °F)) (as reported by the manufacturer) and the solution must be miscible with water.

58. Architectural coating—A coating recommended for field application to stationary structures and their appurtenances, to portable buildings, to pavements, or to curbs. This definition excludes adhesives and coatings recommended by the manufacturer or importer solely for shop applications or solely for application to non-stationary structures, such as airplanes, ships, boats, and railcars.

59. Area—Any or all regions within the boundaries of the state of Missouri, as specified.

60. Area of the state—Any geographical area designated by the commission.

61. Area-wide air quality modeling analysis—An assessment on a scale that includes the entire nonattainment or maintenance area using an air quality dispersion model or photochemical grid model to

determine the effects of emissions on air quality; for example, an assessment using the U.S. Environmental Protection Agency's community multi-scale air quality (CMAQ) modeling system.

62. As applied—The volatile organic compound and solids content of the finishing material that is actually used for coating the substrate. It includes the contribution of materials used for in-house dilution of the finishing material.

63. Asbestos—The asbestiform varieties of chrysotile, crocidolite, amosite, anthophyllite, tremolite, and actinolite.

64. Asbestos abatement—The encapsulation, enclosure, or removal of asbestos-containing materials, in or from a building, or air contaminant source; or preparation of friable asbestos-containing material prior to demolition.

65. Asbestos abatement project—An activity undertaken to encapsulate, enclose, or remove ten (10) square feet or sixteen (16) linear feet or more of friable asbestos-containing materials from buildings and other air contaminant sources or to demolish buildings and other air contaminant sources containing ten (10) square feet or sixteen (16) linear feet or more.

66. Asbestos air sampling professional—An individual who by qualifications and experience is proficient in asbestos abatement air monitoring. The individual shall conduct, oversee, or be responsible for air monitoring of asbestos abatement projects before, during, and after the project has been completed.

67. Asbestos air sampling technician—An individual who has been trained by an air sampling professional to do air monitoring. Such individual conducts air monitoring of an asbestos abatement project before, during, and after the project has been completed.

68. Asbestos-containing material (ACM)—Any material or product which contains more than one percent (1%) asbestos, by weight.

69. Asbestos contractor—Any person who by agreement, contractual or otherwise, conducts asbestos abatement projects at a location other than his/her own place of business.

70. Asbestos Hazard Emergency Response Act (AHERA)—Law enacted in 1986 (P.L. 99–519) that directs the U.S. Environmental Protection Agency to develop a regulatory framework to require schools to inspect their building(s) for asbestos and take appropriate abatement actions using qualified, accredited persons for inspection and abatement.

71. Asbestos inspector—An individual, under the Asbestos Hazard Emergency Response Act, who collects and assimilates information used to determine whether asbestos-containing material is present in a building or other air contaminant sources.

72. Asbestos management planner—An individual, under the Asbestos Hazard Emergency Response Act, who devises and writes plans for asbestos abatement.

73. Asbestos projects—An activity undertaken to remove or encapsulate one hundred sixty (160) square feet or two hundred sixty (260) linear feet or more of friable asbestos-containing materials or demolition of any structure or building or a part of it containing the previously-mentioned quantities of asbestos-containing materials.

74. Asbestos supervisor—An individual who directs, controls, or supervises others in asbestos projects.

75. Asbestos worker—An individual who engages in asbestos projects.

76. Asphalt prime coat—Application of low-viscosity liquid asphalt to an absorbent surface such as a previously-untreated surface.

77. Asphalt seal coat—An application of a thin asphalt surface treatment used to waterproof and improve the texture of an absorbent surface or a nonabsorbent surface such as asphalt or concrete.

78. Authorized account representative—The person who is authorized by the owners or operators of the unit to represent and legally bind each owner and operator in matters pertaining to the Emissions Banking and Trading Program or any other budget trading program.

79. Automated data acquisition and handling system (DAHS)—That component of the Continuous Emissions Monitoring System, or other emissions monitoring system approved for use by the department, designed to interpret and convert individual output signals from pollutant concentration monitors, diluent gas monitors, and other component parts of the monitoring system to produce a continuous record of the measured parameters in approved measurement units.

80. Automatic blanket wash system—Equipment used to clean lithographic blankets which can include, but is not limited to, those utilizing a cloth and expandable bladder, brush, spray, or impregnated cloth system.

81. Automobile—A four (4)-wheel passenger motor vehicle or derivative capable of seating no more than twelve (12) passengers.

82. Automobile and light duty truck adhesive—An adhesive, including glass bonding adhesive, used at an automobile or light duty truck assembly coating installation, applied for the purpose of bonding two (2) motor vehicle surfaces together without regard to the substrates involved.

83. Automobile and light duty truck bedliner—A multi-component coating, used at an automobile or light duty truck assembly coating installation, applied to a cargo bed after the application of topcoat and outside of the topcoat operation to provide additional durability and chip resistance.

84. Automobile and light duty truck cavity wax—A coating, used at an automobile or light duty truck assembly coating installation, applied into the cavities of the motor vehicle primarily for the purpose of enhancing corrosion protection.

85. Automobile and light duty truck deadener—A coating, used at an automobile or light duty truck assembly coating installation, applied to selected motor vehicle surfaces primarily for the purpose of reducing the sound of road noise in the passenger compartment.

86. Automobile and light duty truck gasket/gasket-sealing material—A fluid, used at an automobile or light duty truck assembly coating installation, applied to coat a gasket or replace and perform the same function as a gasket. Automobile and light duty truck gasket/gasket-sealing material includes room temperature vulcanization seal material.

87. Automobile and light duty truck glass bonding primer—A primer, used at an automobile or light duty truck assembly coating installation, applied to windshield or other glass, or to body openings, to prepare the glass or body opening for the application of glass bonding adhesives or the installation of adhesive bonded glass. Automobile and light duty truck glass bonding primer includes glass bonding/cleaning primers that perform both functions (cleaning and priming of the windshield or other glass or body openings) prior to the application of adhesive or the installation of adhesive bonded glass.

88. Automobile and light duty truck lubricating wax/compound—A protective lubricating material, used at an automobile or light duty truck assembly coating installation, applied to motor vehicle hubs and hinges.

89. Automobile and light duty truck sealer—A high viscosity material, used at an automobile or light duty truck assembly coating installation, generally, but not always, applied in the paint shop after the body has received an electrodeposition primer coating and before the application of subsequent coatings (e.g., primer-surfacer). Such materials are also referred to as sealant, sealant primer, or caulk.

90. Automobile and light duty truck surface coating operations—The application, flashoff, and curing of prime, primer-surfacer, topcoat, and final repair coatings during the assembly of passenger cars and light duty trucks excluding the following operations:

A. Wheel coatings;

B. Miscellaneous antirust coatings;

C. Truck interior coatings;

D. Interior coatings;

E. Flexible coatings;

F. Sealers and adhesives; and

G. Plastic parts coatings. (Customizers, body shops, and other repainters are not part of this definition.)

91. Automobile and light duty truck trunk interior coating—A coating, used at an automobile or light duty truck assembly coating installation outside of the primer-surfacer and topcoat operations, applied to the trunk interior to provide chip protection.

92. Automobile and light duty truck underbody coating—A coating, used at an automobile or light duty truck assembly coating installation, applied to the undercarriage or firewall to prevent corrosion and/or provide chip protection.

93. Automobile and light duty truck weatherstrip adhesive—An adhesive, used at an automobile or light duty truck assembly coating installation, applied to weatherstripping material for the purpose of bonding the weatherstrip material to the surface of the motor vehicle.

94. Automotive underbody deadeners—Any coating applied to the underbody of a motor vehicle to reduce the noise reaching the passenger compartment.

95. Auxiliary power unit (APU)—An integrated system that—

A. Provides heat, air conditioning, engine warming, or electricity to components on a heavy duty vehicle; and

B. Is certified by the administrator under part 89 of Title 40, *Code of Federal Regulations* (or any successor regulation), as meeting applicable emissions standards.

96. Average emission rate—The simple average of the hourly NO_x emission rate as recorded by approved monitoring systems.

(C) All terms beginning with C.

1. Camouflage coating—A coating, used principally by the military, to conceal equipment from detection.

2. Capacity factor—Ratio (expressed as a percentage) of a power generating unit's actual annual electric output (expressed in MWe-hr) divided by the unit's nameplate capacity multiplied by eight thousand seven hundred sixty (8,760) hours.

3. Capture device—A hood, enclosed room, floor sweep, or other means of collecting solvent emissions or other pollutants into a duct so that the pollutant can be directed to a pollution control device such as an incinerator or carbon adsorber.

4. Capture efficiency—The fraction of all organic vapors or other pollutants generated by a process that is directed to a control device.

5. Carbon adsorption system—A device containing adsorbent material (for example, activated carbon, aluminum, silica gel); an inlet and outlet for exhaust gases; and a system to regenerate the saturated adsorbent. The carbon adsorption system must provide for the proper disposal or reuse of all volatile organic compounds adsorbed.

6. Cargo tank—A delivery tank truck or railcar which is loading gasoline or which has loaded gasoline on the immediately-previous load.

7. Catalytic incinerator—A control device using a catalyst to allow combustion to occur at a lower temperature.

8. Caulking and smoothing compound—A semi-solid material that is used to aerodynamically smooth exterior vehicle surfaces or fill cavities such as bolt hole accesses. A material shall not be classified as a caulking and smoothing compound if it can be classified as a sealant.

9. Cause or contribute to a new violation—A federal action that—

A. Causes a new violation of a national ambient air quality standard (NAAQS) at a location in a nonattainment or maintenance area which would otherwise not be in violation of the standard during the future period in question if the federal action were not taken; or

B. Contributes, in conjunction with other reasonably foreseeable actions, to a new violation of a NAAQS at a location in a nonattainment or maintenance area in a manner that would increase the frequency or severity of the new violation.

10. Caused by, as used in the terms direct emissions and indirect emissions—Emissions that would not otherwise occur in the absence of the federal action.

11. Ceramic tile installation adhesive—An adhesive intended by the manufacturer for use in the installation of ceramic tiles.

12. Certified product data sheet—Documentation furnished by a coating supplier or an outside laboratory that provides the volatile organic compound (VOC) content by percent weight, the solids content by percent weight, and density of a finishing material, strippable booth coating, or solvent, measured using the EPA Method 24 or an equivalent or alternative method (or formulation data, if approved by the director). The purpose of the certified product data sheet is to assist the affected source in demonstrating compliance with the emission limitations. Therefore, the VOC content should represent the maximum VOC emission potential of the finishing material, strippable booth coating, or solvent.

13. Charcoal kiln—Any closed structure used to produce charcoal by controlled burning (pyrolysis) of wood. Retorts and furnaces used for charcoal production are not charcoal kilns.

14. Charcoal kiln control system—A combination of an emission control device and connected charcoal kiln(s).

15. Chemical milling maskant—A coating that is applied directly to aluminum components to protect surface areas when chemical milling the component with a Type I or Type II etchant. Type I chemical milling maskants are used with a Type I etchant, and Type II chemical milling maskants are used with a Type II etchant. This definition does not include bonding maskants, critical use and line sealer maskants, and seal coat maskants. Maskants that must be used with a combination of Type I or Type II etchants and any of the above types of maskants (i.e., bonding, critical use and line sealer, and seal coat) are also not included in this definition.

16. Chemotherapeutic waste—Waste material resulting from the production or use of antineoplastic agents used for the purpose of stopping or reversing the growth of malignant cells.

17. Circumvention—Building, erecting, installing, or using any article, machine, equipment, process, or method which, when used, would conceal an emission that would otherwise constitute a violation of an applicable standard or requirement. That concealment includes, but is not limited to, the use of gaseous adjutants to achieve compliance with a visible emissions standard, and the piecemeal carrying out of an operation to avoid coverage by a standard that applies only to operations larger than a specific size.

18. Class IA concentrated animal feeding operation—Any concentrated animal feeding operation with a capacity of seven thousand (7,000) animal units or more and corresponding to the following number of animals by species listed below:

Class IA concentrated animal feeding operation 7,000 animal unit equivalents		
Animal species	Animal unit equivalent	Number of animals
Beef feeder or slaughter animal	1.0	7,000
Horse	0.5	3,500
Dairy cow	0.7	4,900
Swine weighing > 55 lbs.	2.5	17,500
Swine weighing < 55 lbs.	10	70,000
Sheep	10	70,000
Laying hens	30	210,000
Pullets	60	420,000
Turkeys	55	385,000
Broiler chickens	100	700,000

19. Class I hardboard—A hardboard panel that meets the specifications of Voluntary Product Standard PS 59-73 as approved by the American National Standards Institute.

20. Class II finish—A finish applied to hardboard panels that meets the specifications of Voluntary Product Standard PS 59-73 as approved by the American National Standards Institute.

21. Clean Air Act (CAA)—The Clean Air Act, as amended; also see Act.

22. Clean scanning—The illegal act of connecting the On-Board Diagnostics (OBD) cable or wireless transmitter to the data link connector of a vehicle other than the vehicle photographed and identified on the emissions vehicle inspection report for the purpose of bypassing the required OBD test procedure.

23. Cleaning operations—Processes of cleaning products, product components, tools, equipment, or general work areas during production, repair, maintenance, or servicing, including, but not limited to, spray gun cleaning, spray booth cleaning, large and small manufactured component cleaning, parts cleaning, equipment cleaning, line cleaning, floor cleaning, and tank cleaning, at sources with emission units.

24. Cleaning solution—A liquid solvent used to remove printing ink and debris from the surfaces of the printing press and its parts. Cleaning solutions include, but are not limited to, blanket wash, roller wash, metering roller cleaner, plate cleaner, impression cylinder washes, and rubber rejuvenators.

25. Clear coat—A coating which lacks color and opacity or is transparent and uses the undercoat as a reflectant base or undertone color. This term also includes corrosion preventative coatings used for the interior of drums or pails.

26. Clear wood finishes—Clear and semi-transparent topcoats applied to wood substrates to provide a transparent or translucent film.

27. Clinker—The product of a Portland cement kiln from which finished cement is manufactured by milling and grinding.

28. Closed container—A container with a cover fastened in place so that it will not allow leakage or spilling of the contents.

29. Closed landfill—A landfill in which solid waste is no longer being placed and in which no additional wastes will be placed without first filing a notification of modification as prescribed under 40 CFR 60.7(a)(4). Once a notification of modification has been filed, and additional solid waste is placed in the landfill, the landfill is no longer closed.

30. Closure—That point in time when a landfill becomes a closed landfill.

31. Coating—A protective, decorative, or functional material applied in a thin layer to a surface. Such materials include, but are not limited to, paints, topcoats, varnishes, sealers, stains, washcoats, basecoats, inks, and temporary protective coatings. Inks not included in the coating definition are—

A. For the purpose of 10 CSR 10-5.330, ink used in printing operations regulated under 10 CSR 10-5.340 and 10 CSR 10-5.442; and

B. For the purpose of 10 CSR 10-2.230, ink used in printing operations regulated under 10 CSR 10-2.290 and 10 CSR 10-2.340.

32. Coating applicator—An apparatus used to apply a surface coating.

33. Coating line—One (1) or more apparatus or operations which include a coating applicator, flash-off area, and oven where a surface coating is applied, dried, or cured, or a combination of these.

34. Coating solids (or solids)—The part of the coating that remains after the coating is dried or cured; solids content is determined using data from EPA Method 24 or an alternative or equivalent method.

35. Co-fired combustor—A unit combusting hospital waste and/or medical/infectious waste with other fuels or wastes and subject to an enforceable requirement limiting the unit to combusting a fuel feed stream, ten percent (10%) or less of the weight of which is comprised, in aggregate, of hospital waste and medical/infectious waste as measured on a calendar-quarter basis. For purposes of this definition, pathological waste, chemotherapeutic waste, and low-level radioactive waste are considered other wastes when calculating the percentage of hospital waste and medical/infectious waste combusted.

36. Cogenerator—For the purpose of paragraph (1)(A)3. of 10 CSR 10-6.364, cogenerator is a facility which—

A. For a unit that commenced construction on or prior to November 15, 1990, was constructed for the purpose of supplying equal to or less than one-third (1/3) its potential electrical output capacity or equal to or less than two hundred nineteen thousand (219,000) MWe-hrs actual electric output on an annual basis to any utility power distribution system for sale (on a gross basis). If the purpose of construction is not known, the administrator will presume that actual operation from 1985 through 1987 is consistent with such purpose. However, if in any three (3)-calendar-year period after November 15, 1990, such unit sells to a utility power distribution system an annual average of more than one-third (1/3) of its potential electrical output capacity and more than two hundred nineteen thousand (219,000) MWe-hrs actual electric output (on a gross basis), that unit shall be an affected unit, subject to the requirements of the Acid Rain Program; or

B. For units which commenced construction after November 15, 1990, supplies equal to or less than one-third (1/3) its potential electrical output capacity or equal to or less than two hundred nineteen thousand (219,000) MWe-hrs actual electric output on an annual basis to any utility power distribution system for sale (on a gross basis). However, if in any three (3)-calendar-year period after November 15, 1990, such unit sells to a utility power distribution system an annual average of more than one-third (1/3) of its potential electrical output capacity and more than two hundred nineteen thousand (219,000) MWe-hrs actual electric output (on a gross basis), that unit shall be an affected unit, subject to the requirements of the Acid Rain Program.

37. Cold cleaner—Any device or piece of equipment that contains and/or uses liquid solvent, into which parts are placed to remove soils from the surfaces of the parts or to dry the parts. Cleaning machines that contain and use heated nonboiling solvent to clean the parts are classified as cold cleaning machines.

38. Cold rolling mill—Batch process aluminum sheet rolling mill with a preset gap between the work rolls used to reduce the sheet thickness. The process generally occurs at temperatures below two hundred sixty-five degrees Fahrenheit (265 °F). A cold rolling mill is used mainly for the production of aluminum sheet at gauges between three-tenths of one inch to two-thousands of one inch (0.3" to 0.002"). Reductions to finish gauge may occur in one (1) pass or several passes.

39. Combined cycle system—A system comprised of one (1) or more combustion turbines, heat recovery steam generators, and steam turbines configured to improve overall efficiency of electricity generation or steam production.

40. Combustion turbine—An enclosed fossil or other fuel-fired device that is comprised of a compressor, a combustor, and a turbine and in which the flue gas resulting from the combustion of fuel in the combustor passes through the turbine, rotating the turbine.

41. Commenced—An owner or operator has undertaken a continuous program of construction or modification, has entered into a binding agreement, or has contractual obligation to undertake and complete within a reasonable time a continuous program of construction or modification.

42. Commenced commercial operation—With regard to a unit that serves a generator, to have begun to produce steam, gas, or other heated medium used to generate electricity for sale or use, including test generation. For the purpose of 10 CSR 10-6.360 the date of commencement of commercial operation shall be as follows:

A. Except as provided in subsection (1)(E) of 10 CSR 10-6.360, for a unit that is a NO_x budget unit under section (1) of 10 CSR 10-6.360 on the date the unit commences commercial operation, such date shall remain the unit's date of commencement of commercial operation even if the unit is subsequently modified, reconstructed, or repowered; and

B. Except as provided in subsections (1)(E) or (3)(H) of 10 CSR 10-6.360, for a unit that is not a NO_x budget unit under section (1) of 10 CSR 10-6.360 on the date the unit commences commercial operation, the date the unit becomes a NO_x budget unit under section (1) of 10 CSR 10-6.360 shall be the unit's date of commencement of commercial operation.

43. Commenced operation—Defined as follows:

A. For the purpose of 10 CSR 10-6.360, commenced operation is to have begun any mechanical, chemical, or electronic process, including, with regard to a unit, start-up of a unit's combustion chamber and the date of commencement of operation shall be as follows:

(I) Except as provided in subsection (1)(E) of 10 CSR 10-6.360, for a unit that is a NO_x budget unit under section (1) of 10 CSR 10-6.360 on the date of commencement of operation, such date shall remain the unit's date of commencement of operation even if the unit is subsequently modified, reconstructed, or repowered; and

(II) Except as provided in subsection (1)(E) of 10 CSR 10-6.360 or subsection (3)(H) of 10 CSR 10-6.360, for a unit that is not a NO_x budget unit under section (1) of 10 CSR 10-6.360 on the date of commencement of operation, the date the unit becomes a NO_x budget unit under section (1) of 10 CSR 10-6.360 shall be the unit's date of commencement of operation; and

B. For all other purposes, commenced operation means the initial setting into operation of any air pollution control equipment or process equipment.

44. Commercial hospital/medical/infectious waste incinerator (HMIWI)—An HMIWI which offers incineration services for hospital/medical/infectious waste generated offsite by firms unrelated to the firm that owns the HMIWI.

45. Commercial solid waste—All types of solid waste generated by stores, offices, restaurants, warehouses, and other nonmanufacturing activities, excluding residential and industrial wastes.

46. Commercial vehicle—Any motor vehicle, other than a passenger vehicle, and any trailer, semitrailer, or pole trailer drawn by such motor vehicle, that is designed, used, and maintained for the transportation of persons or property for hire, compensation, profit, or in the furtherance of a commercial enterprise.

47. Commercial/Institutional boiler—A boiler used in commercial establishments or institutional establishments such as medical centers, institutions of higher education, hotels, and laundries to provide electricity, steam, and/or hot water.

48. Commission—The Missouri Air Conservation Commission established pursuant to 643.040, RSMo.

49. Common stack—A single flue through which emissions from two (2) or more NO_x units are exhausted.

50. Compliance account—A NO_x allowance tracking system account, established for an affected unit, in which the NO_x allowance allocations for the unit are initially recorded and in which are held NO_x allowances available for use by the unit for a control period for the purpose of meeting the unit's NO_x emission limitation.

51. Compliance certification—A submission to the director or the administrator, that is required to report a NO_x budget source's or a NO_x budget unit's compliance or noncompliance with stated requirements and that is signed by the NO_x authorized account representative in accordance with 10 CSR 10-6.360.

52. Compliance cycle—The two (2)-year duration during which a subject vehicle in the enhanced emissions inspection program area is required to comply with 643.300–643.355, RSMo.

A. For private-entity vehicles, the compliance cycle begins sixty (60) days prior to the subject vehicle's registration and biennial license plate tab expiration.

B. For public-entity vehicles, the compliance cycle begins on January 1 of each even-numbered calendar year. The compliance cycle ends on December 31 of each odd-numbered calendar year.

53. Compliant coating—A finishing material or strippable booth coating that meets the emission limits as specified.

54. Condensate (hydrocarbons)—A hydrocarbon liquid separated from natural gas which condenses due to changes in the temperature or pressure, or both, and remains liquid at standard conditions.

55. Condenser—Any heat transfer device used to liquefy vapors by removing their latent heats of vaporization including, but not limited to, shell and tube, coil, surface, or contact condensers.

56. Conference, conciliation, and persuasion—A process of verbal or written communications, including but not limited to meetings, reports, correspondence, or telephone conferences between authorized representatives of the department and the alleged violator. The process shall, at minimum, consist of one (1) offer to meet with the alleged violator tendered by the department. During any such meeting, the department and the alleged violator shall negotiate in good faith to eliminate the alleged violation and shall attempt to agree upon a plan to achieve compliance.

57. Confidential business information—Defined as follows:

A. For the purpose of 10 CSR 10-6.300, confidential business information is information that has been determined by a federal agency, in accordance with its applicable regulations, to be a trade secret, or commercial or financial information obtained from a person and privileged or confidential and is exempt from required disclosure under the Freedom of Information Act (5 U.S.C. 552(b)(4)); and

B. For all other purposes, confidential business information means secret processes, secret methods of manufacture or production, trade secrets, and other information possessed by a business that, under existing legal concepts, the business has a right to preserve as confidential and to limit its use by not disclosing it to others in order that the business may obtain or retain business advantages it derives from its rights in the information.

58. Conformity determination—The evaluation (made after an applicability analysis is completed) that a federal action conforms to the applicable implementation plan and meets the requirements of rule 10 CSR 10-6.300.

59. Conformity evaluation—The entire process from the applicability analysis through the conformity determination that is used to demonstrate that the federal action conforms to the requirements of rule 10 CSR 10-6.300.

60. Conservation vent—Any valve designed and used to reduce evaporation losses of volatile organic compounds by limiting the amount of air admitted to, or vapors released from, the vapor space of a closed storage vessel.

61. Construction—Fabricating, erecting, reconstructing, or installing a source operation. Construction shall include installation of building supports and foundations, laying of underground pipe work, building of permanent storage structures, and other construction activities related to the source operation.

62. Contact adhesive—A contact adhesive does not include rubber cements that are primarily intended for use on paper substrates. Contact adhesive also does not include vulcanizing fluids that are designed and labeled for tire repair only. A contact adhesive is an adhesive that—

A. Is designed for application to both surfaces to be bonded together;

B. Is allowed to dry before the two (2) surfaces are placed in contact with each other;

C. Forms an immediate bond that is impossible, or difficult, to reposition after both adhesive-coated surfaces are placed in contact with each other; and

D. Does not need sustained pressure or clamping of surfaces after the adhesive-coated surfaces have been brought together using sufficient momentary pressure to establish full contact between both surfaces.

63. Continuing program responsibility—A federal agency has responsibility for emissions caused by actions it takes itself or actions of non-federal entities that the federal agency, in exercising its normal programs and authorities, approves, funds, licenses, or permits, provided the agency can impose conditions on any portion of the action that could affect the emissions.

64. Continuous coater—A finishing system that continuously applies finishing materials onto furniture parts moving along a conveyor system. Finishing materials that are not transferred to the part are recycled to the finishing material reservoir. Several types of application methods can be used with a continuous coater including spraying, curtain coating, roll coating, dip coating, and flow coating.

65. Continuous emissions monitoring system (CEMS)—Defined as follows:

A. For the purpose of 10 CSR 10-6.350 and 10 CSR 10-6.360, CEMS means the equipment required to sample, analyze, measure, and provide, by readings taken at least once every fifteen (15) minutes of the measured parameters, a permanent record of nitrogen oxides emissions, expressed in tons per hour for nitrogen oxides. The following systems are component parts included, consistent with 40 CFR 75, in a continuous emissions monitoring system:

(I) Flow monitor;

(II) Nitrogen oxides pollutant concentration monitors;

(III) Diluent gas monitor (oxygen or carbon dioxide) when such monitoring is required;

(IV) A continuous moisture monitor when such monitoring is required; and

(V) An automated data acquisition and handling system; and

B. For all other purposes, continuous emission monitoring system means a monitoring system for continuously measuring and recording the emissions of a pollutant from an affected facility.

66. Continuous hospital/medical/infectious waste incinerator (HMIWI)—An HMIWI that is designed to allow waste charging and ash removal during combustion.

67. Continuous opacity monitoring system (COMS)—All equipment required to continuously measure and record the opacity of emissions within a stack or duct. COMS consists of sample interface, analyzer, and data recorder components and usually includes, at a minimum, transmissometers, transmissometer control equipment, and data transmission, acquisition, and recording equipment.

68. Continuous program to implement—For the purpose of 10 CSR 10-6.300, the federal agency has started the action identified in the plan and does not stop the actions for more than an eighteen (18)-month period, unless it can demonstrate that such a stoppage was included in the original plan.

69. Continuous recorder—A data recording device recording an instantaneous data value at least once every fifteen (15) minutes.

70. Contractor—Defined as follows:

A. For the purpose of 10 CSR 10-5.381, the state contracted company who shall implement the decentralized motor vehicle emissions inspection program as specified in 643.300–643.355, RSMo, and the state contracted company who shall implement the acceptance test procedure; and

B. For all other purposes, contractor means any person, who by agreement, contractual or otherwise, conducts projects or provides services.

71. Control device—Any equipment that reduces the quantity of a pollutant that is emitted to the air. The device may destroy or secure the pollutant for subsequent recovery. Includes, but is not limited to, incinerators, carbon adsorbers, and condensers.

72. Control device efficiency—The ratio of the pollution released by a control device and the pollution introduced to the control device, expressed as a fraction.

73. Control period—The period beginning May 1 of a calendar year and ending on September 30 of the same calendar year.

74. Control system—The combination of capture and control devices used to reduce emissions to the atmosphere.

75. Controlled landfill—Any landfill at which collection and control systems are required as a result of the nonmethane organic compounds emission rate. The landfill is considered controlled if a collection and control system design plan is submitted in compliance with the applicable rule.

76. Conventional air spray—A spray coating method in which the coating is atomized by mixing it with compressed air at an air pressure greater than ten (10) pounds per square inch (gauge) at the point of atomization. Airless and air-assisted airless spray technologies are not conventional air spray because the coating is not atomized by mixing it with compressed air. Electrostatic spray technology is also not considered conventional air spray because an electrostatic charge is employed to attract the coating to the workpiece.

77. Conveyorized degreaser—A type of degreaser in which the parts are loaded continuously.

78. Cove base—A flooring trim unit, generally made of vinyl or rubber, having a concave radius on one (1) edge and a convex radius on the opposite edge that is used in forming a junction between the bottom wall course and the floor or to form an inside corner.

79. Cove base installation adhesive—An adhesive intended by the manufacturer to be used for the installation of cove base or wall base on a wall or vertical surface at floor level.

80. Criteria pollutant or standard—Any pollutants for which there is established a National Ambient Air Quality Standard at 40 CFR 50.

81. Crude oil—A naturally-occurring mixture which consists of hydrocarbons and sulfur, nitrogen, or oxygen derivatives of hydrocarbons (or a combination of these derivatives) which is a liquid at standard conditions.

82. Custody transfer—The transfer of produced crude oil or condensate, or both, after processing or treating, or both, in the producing operations, from storage tanks or automatic transfer facilities to pipelines or any other forms of transportation.

83. Cutback asphalt—Any asphaltic cement that has been liquefied by blending with volatile organic compound liquid diluents.

84. Cyanoacrylate adhesive—An adhesive with a cyanoacrylate content of at least ninety-five percent (95%) by weight.

85. Cyclone boiler—A boiler with a horizontal, cylindrical furnace that burns crushed, rather than pulverized, coal.

86. Cyclone electric generating unit (EGU)—An electric generating unit with a fossil-fuel-fired boiler consisting of one (1) or more horizontal cylindrical barrels that utilize tangentially applied air to produce a swirling combustion pattern of coal and air.

(D) All terms beginning with D.

1. Data Link Connector (DLC)—The terminal required to be installed on all On-Board Diagnostics (OBD) equipped vehicles that allows communication with a vehicle's OBD system.

2. Day—A period of twenty-four (24) consecutive hours beginning at midnight local time, or beginning at a time consistent with a facility's operating schedule.

3. Degreasing—A solvent metal cleaning in which nonaqueous solvents are used to clean and remove soils from metal surfaces.

4. Delivery vessel—A tank truck, trailer, or railroad tank car.

5. *De minimis* levels—Any emissions level less than or equal to the rates listed in Table 1, subsection (3)(A) of this rule.

6. Demolition—The wrecking, razing, burning, or removing of any load-supporting structural member or portion of a structure together with any related handling operation.

7. Department—Defined as follows:

A. For the purpose of 10 CSR 10-5.381, the department is the state agency responsible for oversight of the vehicle emissions inspection and maintenance program required by the 1990 Federal Clean Air Act Amendments; and

B. For all other purposes, department means the Missouri Department of Natural Resources, which includes the director thereof, or the person or division or program within the department delegated the authority to render the decision, order, determination, finding, or other action that is subject to review by the commission. PO Box 176, Jefferson City, MO 65102.

8. Design capacity—The maximum amount of solid waste the landfill can accept, as indicated in terms of volume or mass in the most recent operating or construction permit issued by the county or state agency responsible for regulating the landfill, plus any in-place

waste not accounted for in the most recent permit. If the owner or operator chooses to convert the design capacity from volume to mass or from mass to volume to demonstrate its design capacity is less than two and one-half (2.5) million megagrams or two and one-half (2.5) million cubic meters, the calculation must include a site-specific density, which must be recalculated annually.

9. Designated representative—A responsible individual authorized by the owner or operator of an affected source and of all affected units at the source, as evidenced by a certificate of representation submitted in accordance with 40 CFR 72, subpart B to represent and legally bind each owner and operator, as a matter of federal law, in matters pertaining to the Acid Rain Program. Whenever the term responsible official is used in 40 CFR 70, 10 CSR 10-6.065, or in any other regulations implementing Title V of the Act, it shall be deemed to refer to the designated representative with regard to all matters under the Acid Rain Program.

10. Diagnostic Trouble Code (DTC)—An alphanumeric code consisting of five (5) characters which is stored by a vehicle's On-Board Diagnostics system if a vehicle malfunctions or deteriorates in such a way as to potentially raise the vehicle's tailpipe or evaporative emissions more than one and one-half (1.5) times the federal test procedure certification limits. The code indicates the system or component that is in need of diagnosis and repair to prevent the vehicle's emissions from increasing further.

11. Diammonium phosphate—A product resulting from the reaction between phosphoric acid and ammonia having the molecular formula $(NH_4)_2HPO_4$.

12. Diesel engine—A compression-ignited two (2)- or four (4)-stroke engine in which liquid fuel is injected into the combustion chamber and ignited when the air charge has been compressed to a temperature sufficiently high for auto-ignition.

13. Digital printing—A print-on-demand method of printing in which an electronic output device transfers variable data, in the form of an image, from a computer to a variety of substrates. Digital printing methods include, but are not limited to, inkjet printing, electrophotographic printing, dye sublimation printing, thermal wax printing, and solid ink printing.

14. Dioxins/furans—The combined emission of tetra- through octa-chlorinated dibenzo-para-dioxins and dibenzofurans as measured by the EPA Method 23 of 40 CFR 60, Appendix A-7.

15. Direct emissions—Those emissions of a criteria pollutant or its precursors that are caused or initiated by the federal action and originate in a nonattainment or maintenance area and occur at the same time and place as the action and are reasonably foreseeable.

16. Director or department director— Director of the Missouri Department of Natural Resources, or a designated representative, to carry out the duties as described in 643.060, RSMo.

17. Dispersion technique—

A. A dispersion technique is any technique designed to affect the concentration of a pollutant in the ambient air by—

(I) Using that portion of a stack which exceeds good engineering practice stack height;

(II) Varying the rate of emission of a pollutant according to atmospheric conditions or ambient concentrations of that pollutant; or

(III) Increasing final exhaust gas plume rise by manipulating source process parameters, exhaust gas parameters, stack parameters, or combining exhaust gases from several existing stacks into one (1) stack; or other selective handling of exhaust gas streams so as to increase the exhaust gas plume rise; and

B. This definition does not include:

(I) The reheating of a gas stream, following use of a pollution control system, for the purpose of returning the gas to the temperature at which it was originally discharged from the installation generating the gas stream;

(II) The merging of exhaust gas streams where—

(a) The installation owner or operator demonstrates that the installation was originally designed and constructed with the merged gas streams;

(b) After July 8, 1985, the merging is part of a change in operation at the installation that includes the installation of emissions control equipment and is accompanied by a net reduction in the allowable emissions of a pollutant. This exclusion from the definition of dispersion technique shall apply only to the emission limitation for the pollutant affected by a change in operation; or

(c) Before July 8, 1985, the merging was part of a change in operation at the installation that included the installation of emissions control equipment or was carried out for sound economic or engineering reasons. Where there was an increase in the emission limitation or in the event that no emission limitation was in existence prior to the merging, the director shall presume that merging was significantly motivated by an intent to gain emissions credit for greater dispersion. Without a demonstration by the source owner or operator that merging was not significantly motivated by that intent, the director shall deny credit for the effects of merging in calculating the allowable emissions for the source;

(III) Smoke management in agricultural or silvicultural prescribed burning programs;

(IV) Episodic restrictions on residential woodburning and open burning; or

(V) Techniques under part (2)(D)17.A.(III) of this rule which increase final exhaust gas plume rise where the resulting allowable emissions of sulfur dioxide from the installation do not exceed five thousand (5,000) tons per year.

18. Disposal facility—All contiguous land and structures, other appurtenances, and improvements on the land used for the disposal of solid waste.

19. Disposed off-site—Sending used organic solvents or coatings outside of the facility boundaries for disposal.

20. Distillation operation—An operation separating one (1) or more feed stream(s) into two (2) or more exit streams, each exit stream having component concentration different from those in the feed stream(s). The separation is achieved by the redistribution of the components between the liquid- and vapor-phase as they approach equilibrium within the distillation unit.

21. Distillation unit—A device or vessel in which distillation operations occur, including all associated internals (such as trays or packing) and accessories (such as reboiler, condenser, vacuum pump, stream jet, etc.), plus any associated recovery system.

22. Draft permit—The version of a permit for which the permitting authority offers public participation or affected state review.

23. Drum—Any cylindrical container of thirteen to one hundred ten (13–110)-gallon capacity.

24. Dry cleaning installation—An installation engaged in the cleaning of fabrics in an essentially nonaqueous solvent by means of one (1) or more washes in solvent, extraction of excess solvent by spinning and drying by tumbling in an airstream. The installation includes, but is not limited to, any washer, dryer, filter and purification systems, waste disposal systems, holding tanks, pumps, and attendant piping and valves.

25. Dry scrubber—An add-on air pollution control system that injects dry alkaline sorbent (dry injection) or sprays an alkaline sorbent (spray dryer) to react with and neutralize acid gases in the exhaust stream forming a dry powder material.

26. Dual fuel engine—Compression ignited stationary internal combustion engine that is capable of burning liquid fuel and gaseous fuel simultaneously.

(E) All terms beginning with E.

1. Early reduction credit (ERC)—NO_x emission reductions in the years 2000, 2001, 2002, and 2003 that are below the limits specified in subsection (3)(A) of 10 CSR 10-6.350; ERCs will only be available for use during the years of 2004 and 2005. When calculating ERCs or performing calculations involving ERCs, ERCs shall always be rounded down to the nearest ton.

2. Economic benefit—Any monetary gain which accrues to a violator as a result of noncompliance.

3. Electric dissipating coating—A coating that rapidly dissipates a high-voltage electric charge.

4. Electric generating unit (EGU)—Any fossil-fuel-fired boiler or turbine that serves an electrical generator with the potential to use more than fifty percent (50%) of the usable energy from the boiler or turbine to generate electricity.

5. Electric-insulating and thermal conducting coating—A coating that displays an electrical insulation of at least one thousand (1,000) volts DC per mil on a flat test plate and an average thermal conductivity of at least twenty-seven hundredths British thermal units (0.27 Btu) per hour-foot-degree-Fahrenheit.

6. Electric-insulating varnish—A non-convertible-type coating applied to electric motors, components of electric motors, or power transformers, to provide electrical, mechanical, and environmental protection or resistance.

7. Electrodeposition primer (EDP)—A protective, corrosion-resistant waterborne primer on exterior and interior surfaces that provides thorough coverage of recessed areas. It is a dip coating method that uses an electrical field to apply or deposit the conductive coating onto the part. The object being painted acts as an electrode that is oppositely charged from the particles of paint in the dip tank.

8. Electromagnetic interference/radio frequency interference (EMI/RFI) shielding—A coating used on electrical or electronic equipment to provide shielding against electromagnetic interference (EMI), radio frequency interference (RFI), or static discharge.

9. Electronic component—All portions of an electronic assembly, including, but not limited to, circuit board assemblies, printed wire assemblies, printed circuit boards, soldered joints, ground wires, bus bars, and associated electronic component manufacturing equipment such as screens and filters.

10. Electrostatic preparation coat—A coating that is applied to a plastic part solely to provide conductivity for the subsequent application of a prime, topcoat, or other coating through the use of electrostatic application methods. An electrostatic preparation coat is clearly identified as an electrostatic preparation coat on its material safety data sheet.

11. Emergency—Defined as follows:

A. For the purpose of 10 CSR 10-6.300, an emergency is a situation where extremely quick action on the part of the federal agencies involved is needed and where the timing of such federal activities makes it impractical to meet the requirements of 10 CSR 10-6.300, such as natural disasters like hurricanes or earthquakes, civil disturbances such as terrorist acts, and military mobilizations; and

B. For all other purposes, emergency means a situation or occurrence of a serious nature that develops suddenly, unexpectedly, and demands immediate action.

12. Emergency asbestos project—An asbestos project that must be undertaken immediately to prevent imminent severe human exposure or to restore essential facility operation.

13. Emergency standby boiler—For the purpose of 10 CSR 10-5.510, a boiler operated during times of loss of primary power at the installation that is beyond the control of the owner or operator, during routine maintenance, to provide steam for building heat; or to protect essential equipment.

14. Emergency standby engine—For the purpose of 10 CSR 10-6.390, an internal combustion engine used only when normal electrical power or natural gas service is interrupted or for the emergency pumping of water for either fire protection or flood relief. An emergency standby engine may not be operated to supplement a primary power source when the load capacity or rating of the primary power source has been either reached or exceeded.

15. Emergency standby generator— For the purpose of 10 CSR 10-6.350, a generator operated only during times of loss of primary power at the facility that is beyond the control of the owner or operator of the facility or during routine maintenance.

16. Emergency stationary combustion turbine—For the purpose of 10 CSR 10-5.510, a stationary combustion turbine operated only during times of loss of primary power at the facility that is beyond the control of the owner or operator of the facility or during routine maintenance.

17. Emergency stationary internal combustion engine—For the purpose of 10 CSR 10-5.510, a stationary internal combustion engine used to drive pumps, aerators, or other equipment only during times of loss of primary power at the facility that is beyond the control of the owner or operator of the facility or during routine maintenance.

18. Emission(s)—Defined as follows:

A. For the purpose of 10 CSR 10-6.360, air pollutants exhausted from a unit or source into the atmosphere, as measured, recorded, and reported to the administrator by the NO_x authorized account representative and as determined by the administrator; and

B. For all other purposes, emission(s) means the release or discharge, whether directly or indirectly, into the atmosphere of one (1) or more air contaminants.

19. Emission data—

A. The identity, amount, frequency, concentration, or other characteristics (related to air quality) of any air contaminant which—

(I) Has been emitted from an emission unit;

(II) Results from any emission by the emissions unit;

(III) Under an applicable standard or limitation, the emissions unit was authorized to emit; or

(IV) Is a combination of any of the parts (2)(E)19.A.(I), (II), or (III) of this rule;

B. The name, address (or description of the location), and the nature of the emissions unit necessary to identify the emission units including a description of the device, equipment, or operation constituting the emissions unit; and

C. The results of any emission testing or monitoring required to be reported under any rules of the commission.

20. Emission events—Discrete venting episodes that may be associated with a single unit of operation.

21. Emission inventory—A listing of information on the location, type of source, type and quantity of pollutant emitted, as well as other parameters of the emissions.

22. Emission limitation—A regulatory requirement, permit condition, or consent agreement which limits the quantity, rate, or concentration of emissions on a continuous basis, including any requirement which limits the level of opacity, prescribes equipment, sets fuel specifications, or prescribes operation or maintenance procedures for an installation to assure continuous emission reduction.

23. Emission offsets—Emissions reductions which are quantifiable, consistent with the applicable implementation plan attainment and reasonable further progress demonstrations, surplus to reductions required by, and credited to, other applicable implementation plan provisions, enforceable under both state and federal law, and permanent within the time frame specified by the program. Emissions reductions intended to be achieved as emissions offsets must be monitored and enforced in a manner equivalent to that under the U.S. Environmental Protection Agency's new source review requirements.

24. Emission rate cutoff—The threshold annual emission rate to which a landfill compares its estimated emission rate to determine if control under the applicable regulation is required.

25. Emission reduction credit (ERC)—A certified emission reduction that is created by eliminating future emissions and expressed in tons per year. One (1) ERC is equal to one (1) ton per year. An ERC must be real, properly quantified, permanent, and surplus.

26. Emissions budgets—Those portions of the total allowable emissions defined in a U.S. Environmental Protection Agency-approved revision to the applicable implementation plan for a certain date for the purpose of meeting reasonable further progress milestones or attainment or maintenance demonstrations, for any criteria pollutant or its precursors, specifically allocated by the applicable implementation plan to mobile sources, to any stationary source or class of stationary sources, to any federal action or class of action, to

any class of area sources, or to any subcategory of the emissions inventory. The allocation system must be specific enough to assure meeting the criteria of section 176(c)(1)(B) of the Clean Air Act. An emissions budget may be expressed in terms of an annual period, a daily period, or other period established in the applicable implementation plan.

27. Emissions inspection—For the purpose of 10 CSR 10-5.381, tests performed on a vehicle in order to evaluate whether the vehicle's emissions control components are present and properly functioning.

28. Emissions report—A report that satisfies the provisions of 10 CSR 10-6.110 and is either a—

A. Full emissions report—Contains all required data elements for current reporting year; or

B. Reduced reporting form—Represents data elements and emissions from the last full emissions report.

29. Emissions unit—Defined as follows:

A. For the purpose of 10 CSR 10-6.410, emissions unit is any part of a source or activity at a source that emits or would have the potential to emit criteria pollutants or their precursors; and

B. For all other purposes, emissions unit means any part or activity of an installation that emits or has the potential to emit any regulated air pollutant or any pollutant listed under section 112(b) of the Act. This term is not meant to alter or affect the definition of the term unit for the purposes of Title IV of the Act.

30. Emulsified asphalt—An emulsion of asphalt cement and water that contains a small amount of an emulsifying agent, as specified in ASTM D (977-77) or ASTM D (2397-73).

31. Enamel—A surface coating that is a mixture of paint and varnish, having vehicles similar to those used for varnish, but also containing pigments.

32. Enclosed combustor—An enclosed firebox which maintains a relatively-constant limited peak temperature generally using a limited supply of combustion air. An enclosed flare is considered an enclosed combustor.

33. End exterior coating—A coating applied to the exterior end of a can to provide protection to the metal.

34. End seal compound—The gasket forming coating used to attach the end pieces of a can during manufacturing or after filling with contents.

35. Energized electrical system—Any alternating current (AC) or direct current (DC) electrical circuit on an assembled aircraft once electrical power is connected, including interior passenger and cargo areas, wheel wells, and tail sections.

36. Energy Information Administration—The Energy Information Administration of the United States Department of Energy.

37. Engine rating—The output of an engine as determined by the engine manufacturer and listed on the nameplate of the unit, regardless of any derating.

38. Equipment—Any item that is designed or intended to perform any operation and includes any item attached to it to assist in the operation.

39. Equipment leak—Emissions of volatile organic compounds from pumps, valves, flanges, or other equipment used to transfer or apply finishing materials or organic solvents.

40. Equivalent method—Any method of sampling and analyzing for an air pollutant that has been demonstrated to the director's satisfaction to have a consistent and quantitatively-known relationship to the reference method under specific conditions.

41. Etching filler—A coating for metal that contains less than twenty-three percent (23%) solids by weight and at least one-half percent (0.5%) acid by weight, and is used instead of applying a pretreatment coating followed by a primer.

42. Ethylene propylene diene monomer (EPDM) roof membrane—A prefabricated single sheet of elastomeric material composed of ethylene propylene diene monomer and that is field-applied to a building roof using one (1) layer of membrane material.

43. Excess emissions—The emissions which exceed the requirements of any applicable emission control regulation.

44. Excessive concentration—

A. For installations seeking credit for reduced ambient pollutant concentrations from stack height exceeding that defined in subparagraph (2)(G)15.B. of this rule an excessive concentration is a maximum ground level concentration due to emissions from a stack due in whole or part to downwash, wakes, or eddy effects produced by nearby structures or nearby terrain features which are at least forty percent (40%) in excess of the maximum concentration experienced in the absence of the downwash, wakes, or eddy effects, and that contributes to a total concentration due to emissions from all installations that is greater than an ambient air quality standard. For installations subject to the prevention of significant deterioration program as set forth in 10 CSR 10-6.060(8), an excessive concentration means a maximum ground level concentration due to emissions from a stack due to the same conditions as mentioned previously and is greater than a prevention of significant deterioration increment. The allowable emission rate to be used in making demonstrations under this definition shall be prescribed by the new source performance regulation as referenced by 10 CSR 10-6.070 for the source category unless the owner or operator demonstrates that this emission rate is infeasible. Where demonstrations are approved by the director, an alternative emission rate shall be established in consultation with the source owner or operator;

B. For installations seeking credit after October 11, 1983, for increases in stack heights up to the heights established under subparagraph (2)(G)15.B. of this rule, an excessive concentration is either—

(I) A maximum ground level concentration due in whole or part to downwash, wakes, or eddy effects as provided in subparagraph (2)(E)44.A. of this rule, except that the emission rate used shall be the applicable emission limitation (or, in the absence of this limit, the actual emission rate); or

(II) The actual presence of a local nuisance caused by the stack, as determined by the director; and

C. For installations seeking credit after January 12, 1979, for a stack height determined under subparagraph (2)(G)15.B. of this rule where the director requires the use of a field study of fluid model to verify good engineering practice stack height, for installations seeking stack height credit after November 9, 1984, based on the aerodynamic influence of cooling towers and for installations seeking stack height credit after December 31, 1970, based on the aerodynamic influence of structures not represented adequately by the equations in subparagraph (2)(G)15.B. of this rule, a maximum ground level concentration due in whole or part to downwash, wakes, or eddy effects that is at least forty percent (40%) in excess of the maximum concentration experienced in the absence of downwash, wakes, or eddy effects.

45. Existing—Defined as follows:

A. For the purpose of 10 CSR 10-6.405, existing is any source which was in being, installed, or under construction on February 15, 1979, in the Kansas City or St. Louis metropolitan area, except that if any source in these areas subsequently is altered, repaired, or rebuilt at a cost of thirty percent (30%) or more of its replacement cost, exclusive of routine maintenance, it shall no longer be existing but shall be considered as new; and

B. For all other purposes, existing, as applied to any equipment, machine, device, article, contrivance, or installation shall mean in being, installed, or under construction in the Kansas City metropolitan area on September 25, 1968 (Buchanan County, January 21, 1970), in the St. Louis metropolitan area on March 24, 1967 (Franklin County, January 18, 1972), in the Springfield metropolitan area on September 24, 1971, and in the outstate Missouri area on February 24, 1971, except that if equipment, machine, device, article, contrivance, or installation subsequently is altered, repaired, or rebuilt at a cost of fifty percent (50%) or more of its replacement cost exclusive of routine maintenance, it shall no longer

be existing but shall be considered new as defined in this regulation. The cost of installing equipment designed principally for the purpose of air pollution control is not to be considered a cost of altering, repairing, or rebuilding existing equipment for the purpose of this definition.

46. Exterior coating (two (2)-piece)—A surface coating used to coat the outside face of a two (2)-piece can. Used to provide protection from the lithograph or printing operations.

47. External floating roof—A storage vessel cover in an open top tank consisting of a double-deck or pontoon single deck which rests upon and is supported by petroleum liquid being contained and is equipped with a closure seal(s) to close the space between the roof edge and tank wall.

48. Extreme environmental conditions—The exposure to any of the weather all of the time, temperatures consistently above ninety-five degrees Celsius (95 °C), detergents-abrasive and scouring agents, solvents, corrosive atmospheres, or similar environmental conditions.

49. Extreme high gloss coating—A coating applied to—

A. Pleasure craft which, when tested by the ASTM Test Method D-523-89, shows a reflectance of ninety percent (90%) or more on a sixty-degree (60°) meter; or

B. Metal and plastic parts that are not components of pleasure craft, which, when tested by the ASTM Test Method D-523 adopted in 1980, shows a reflectance of seventy-five percent (75%) or more on a sixty-degree (60°) meter.

50. Extreme performance coating—A coating used on a metal or plastic surface where the coated surface is, in its intended use, subject to the following:

A. Chronic exposure to corrosive, caustic, or acidic agents, chemicals, chemical fumes, chemical mixtures, or solutions;

B. Repeated exposure to temperatures in excess of two hundred fifty degrees Fahrenheit (250 °F); or

C. Repeated heavy abrasion, including mechanical wear and repeated scrubbing with industrial grade solvents, cleansers, or scouring agents.

(I) All terms beginning with I.

1. Idling—The operation of an engine where the engine is not engaged in gear.

2. Incinerator—Defined as follows:

A. For the purpose of 10 CSR 10-5.530, incinerator is an enclosed combustion device that thermally oxidizes volatile organic compounds to carbon monoxide (CO) and carbon dioxide (CO_2). This term does not include devices that burn municipal or hazardous waste material;

B. For the purpose of 10 CSR 10-5.550, incinerator is any enclosed combustion device that is used for destroying organic compounds. Auxiliary fuel may be used to heat waste gas to combustion temperatures. Any energy recovery section present is not physically formed into one (1) section; rather, the energy recovery system is a separate section following the combustion section and the two (2) are joined by ducting or connections that carry fuel gas; and

C. For all other purposes, incinerator means any article, machine, equipment, contrivance, structure, or part of a structure used to burn refuse or to process refuse material by burning other than by open burning as defined in this rule.

3. Increase the frequency or severity of any existing violation of any standard in any area—To cause a nonattainment area to exceed a standard more often or to cause a violation at a greater concentration than previously existed or would otherwise exist during the future period in question, if the project were not implemented.

4. Indirect emissions—Those emissions of a criteria pollutant or its precursors—

A. That are caused or initiated by the federal action and originate in the same nonattainment or maintenance area but may occur at a different time or place;

B. That are reasonably foreseeable;

C. That the agency can practically control;

D. That which the agency has continuing program responsibility; and

E. That the federal agency can practically control and will maintain control due to a continuing program responsibility of the federal agency, including, but not limited to—

(I) Traffic on or to, or stimulated or accommodated by, a proposed facility which is related to increases or other changes in the scale or timing of operations of such facility;

(II) Emissions related to the activities of employees of contractors or federal employees;

(III) Emissions related to employee commutation and similar programs to increase average vehicle occupancy imposed on all employers of a certain size in the locality; or

(IV) Emissions related to the use of federal facilities under lease or temporary permit.

For the purposes of this definition, even if a federal licensing, rulemaking, or other approving action is a required initial step for a subsequent activity that causes emissions, such initial steps do not mean that a federal agency can practically control any resulting emissions.

5. Indirect heating source—A source operation in which fuel is burned for the primary purpose of producing steam, hot water, or hot air, or other indirect heating of liquids, gases, or solids where, in the course of doing so, the products of combustion do not come into direct contact with process materials.

6. Indoor floor covering installation adhesive—An adhesive intended by the manufacturer for use in the installation of wood flooring, carpet, resilient tile, vinyl tile, vinyl-backed carpet, resilient sheet, and roll or artificial grass. Adhesives used to install ceramic tile and perimeter bonded sheet flooring with vinyl backing onto a non-porous substrate, such as flexible vinyl, are excluded from this category.

7. Industrial boiler—A boiler used in manufacturing, processing, mining, and refining, or any other industry to provide steam, hot water, and/or electricity.

8. Industrial solid waste—Solid waste generated by manufacturing or industrial processes that is not a hazardous waste regulated under Subtitle C of the Resource Conservation and Recovery Act, 40 CFR 264 and 265. Such waste may include, but is not limited to, waste resulting from the following manufacturing processes: electric power generation; fertilizer/agricultural chemicals; food and related products/by-products; inorganic chemicals; iron and steel manufacturing; leather and leather products; nonferrous metals manufacturing/foundries; organic chemicals; plastics and resins manufacturing; pulp and paper industry; rubber and miscellaneous plastic products; stone, glass, clay, and concrete products; textile manufacturing; transportation equipment; and water treatment. This term does not include mining waste or oil and gas waste.

9. Industrial surface coating operation—The surface coating of manufactured items intended for distribution in commerce to persons other than the person or legal entity performing the surface coating.

10. Infectious agent—Any organism (such as a virus or bacteria) that is capable of being communicated by invasion and multiplication in body tissues and capable of causing disease or adverse health impacts in humans.

11. Initial emissions inspection—For the purpose of 10 CSR 10-5.381, an emissions inspection consisting of the inspection series that occurs the first time a vehicle is inspected in a compliance cycle.

12. Initial fueling of motor vehicles—The operation, including related equipment, of dispensing gasoline fuel into a newly-assembled motor vehicle equipped with onboard refueling vapor recovery (ORVR) at an automobile assembly plant while the vehicle is still being assembled on the assembly line. Newly-assembled motor vehicles being fueled on the assembly line shall be equipped with ORVR and have fuel tanks that have never before contained gasoline fuel.

13. Ink formulation as applied—The base graphic arts coating and any additives such as thinning solvents to make up the ink material that is applied to a substrate.

14. In-line repair—The operation performed and coating(s)

applied to correct damage or imperfections in the topcoat on parts that are not yet on a completely-assembled vehicle. The curing of the coatings applied in these operations is accomplished at essentially the same temperature as that used for curing the previously-applied topcoat. Also referred to as high-bake repair or high-bake reprocess and is considered part of the topcoat operation.

15. Innovative control technology—Any system of air pollution control that has not been adequately demonstrated in practice but would have a substantial likelihood of achieving greater continuous emission reduction than any control system in current practice or of achieving at least comparable reductions at lower cost in terms of energy, economics, or non-air quality environmental impacts.

16. Insignificant activity—An activity or emission unit in which the only applicable requirement would be to list the requirement in an operating permit application under 10 CSR 10-6.065 and is either of the following:

A. Emission units whose aggregate emission levels for the installation do not exceed that of the *de minimis* levels; and

B. Emission units or activities listed in 10 CSR 10-6.061 as exempt or excluded from construction permit review under 10 CSR 10-6.060.

17. Installation—All source operations including activities that result in fugitive emissions, that belong to the same industrial grouping (that have the same two (2)-digit code as described in the *Standard Industrial Classification Manual*, 1987), and any marine vessels while docked at the installation, located on one (1) or more contiguous or adjacent properties and under the control of the same person (or persons under common control).

18. Institutional cleaning—Cleaning activities conducted at organizations, societies, or corporations including but not limited to schools, hospitals, sanitariums, and prisons.

19. Institutional vehicle—Any motor vehicle, other than a passenger vehicle, and any trailer, semitrailer, or pole trailer drawn by such a motor vehicle, that is designed, used, and maintained for the transportation of persons or property for an establishment, foundation, society, or the like, devoted to the promotion of a particular cause or program, especially one of a public, educational, or charitable character.

20. Interior body spray (two (2)- and three (3)-piece)—The surface coating for the interior and ends of a two (2)-piece formed can or the surface coating of the side of the rectangular material to be used as the interior and ends of a three (3)-piece can.

21. Interior well—Any well or similar collection component located inside the perimeter of the landfill waste. A perimeter well located outside the landfill waste is not an interior well.

22. Intermediate foil mill—Batch process aluminum foil rolling mill with the work rolls in contact to reduce foil gauge. This process reduces finished sheet to intermediate foil gauges. An intermediate foil mill is used mainly in the production of aluminum foil at gauges between 0.010 inches to 0.0004 inches. Reductions to finish gauge may occur in several passes through the mill.

23. Intermediate installations—Part 70 installations that become basic state installations based on their potential to emit by accepting the imposition of voluntarily-agreed-to federally-enforceable limitations on the type of materials combusted or processed, operating rates, hours of operation, or emission rates more stringent than those otherwise required by rule or regulation.

24. Intermittent hospital/medical/infectious waste incinerator (HMIWI)—An HMIWI that is designed to allow waste charging, but not ash removal, during combustion.

25. Internal combustion engine—Any engine in which power, produced by heat and/or pressure developed in the engine cylinder(s) by burning a mixture of fuel and air, is subsequently converted to mechanical work by means of one (1) or more pistons.

26. Internal floating roof—A product cover in a fixed roof tank which rests upon or is floated upon the volatile organic compound liquid being contained and which is equipped with a sliding seal(s) to close the space between the edge of the covers and tank shell.

(M) All terms beginning with M.

1. Maintenance area—An area that was designated as nonattainment and has been re-designated in 40 CFR 81 to attainment, meeting the provisions of section 107(d)(3)(E) of the Act and has a maintenance plan approved under section 175A of the Act.

2. Maintenance operation—Normal routine maintenance on any stationary internal combustion engine or the use of an emergency standby engine and fuel system during testing, repair, and routine maintenance to verify its readiness for emergency standby use.

3. Maintenance plan—A revision to the applicable Missouri State Implementation Plan, meeting the requirements of section 175A of the Clean Air Act.

4. Major modification—Any physical change or change in the method of operation at an installation or in the attendant air pollution control equipment that would result in a significant net emissions increase of any pollutant. A physical change or a change in the method of operation, unless previously limited by enforceable permit conditions, shall not include:

A. Routine maintenance, repair, and replacement of parts;

B. Use of an alternative fuel or raw material by reason of an order under sections 2(a) and (b) of the Energy Supply and Environmental Coordination Act of 1974, a prohibition under the Power Plant and Industrial Fuel Use Act of 1978, or by reason of a natural gas curtailment plan pursuant to the Federal Power Act;

C. Use of an alternative fuel or raw material, if prior to January 6, 1975, the source was capable of accommodating the fuel or material, unless the change would be prohibited under any enforceable permit condition which was established after January 6, 1975;

D. An increase in the hours of operation or in the production rate unless the change would be prohibited under any enforceable permit condition which was established after January 6, 1975; or

E. Use of an alternative fuel by reason of an order or rule under section 125 of the Clean Air Act.

5. Malfunction—Defined as follows:

A. For the purpose of 10 CSR 10-6.200, malfunction is any sudden, infrequent, and not reasonably-preventable failure of air pollution control equipment, process equipment, or a process to operate in a normal or usual manner. Failures that are caused, in part, by poor maintenance or careless operation are not malfunctions. During periods of malfunction the operator shall operate within established parameters as much as possible, and monitoring of all applicable operating parameters shall continue until all waste has been combusted or until the malfunction ceases, whichever comes first; and

B. For all other purposes, malfunction means a sudden and unavoidable failure of air pollution control equipment or process equipment or of a process to operate in a normal and usual manner. Excess emissions caused by improper design shall not be deemed a malfunction.

6. Malfunction indicator lamp (MIL)—An amber-colored warning light located on the dashboard of vehicles equipped with On-Board Diagnostics systems indicating to the vehicle operator that the vehicle either has a malfunction or has deteriorated enough to cause a potential increase in the vehicle's tailpipe or evaporative emissions.

7. Manure storage and application systems—Any system that includes but is not limited to lagoons, manure treatment cells, earthen storage ponds, manure storage tanks, manure stockpiles, composting areas, pits and gutters within barns, litter used in bedding systems, all types of land application equipment, and all pipes, hoses, pumps, and other equipment used to transfer manure.

8. Marine vessel—A craft capable of being used as a means of transportation on water, except amphibious vehicles.

9. Maskant—A coating applied directly to an aerospace component to protect those areas when etching other parts of the component.

10. Mask coating—A thin film coating applied through a template to coat a small portion of a substrate.

11. Material safety data sheet (MSDS)—The chemical, physical, technical, and safety information document supplied by the manufacturer of the coating, solvent, or other chemical product.

12. Maximum achievable control technology (MACT)—The maximum degree of reduction in emissions of the hazardous air pollutants listed in subsection (3)(C) of this rule (including a prohibition on these emissions where achievable) that the administrator, taking into consideration the cost of achieving emissions reductions and any non-air quality health and environmental impacts and requirements, determines is achievable for new or existing sources in the category or subcategory to which this emission standard applies, through application of measures, processes, methods, systems, or techniques including, but not limited to, measures which—

A. Reduce the volume of or eliminate emissions of pollutants through process changes, substitution of materials, or other modifications;

B. Enclose systems or processes to eliminate emissions;

C. Collect, capture, or treat pollutants when released from a process, stack, storage, or fugitive emissions point;

D. Are design, equipment, work practice, or operational standards (including requirements for operational training or certification); or

E. Are a combination of subparagraphs (2)(M)12.A.–D. of this rule.

13. Maximum charge rate—For continuous and intermittent hospital/medical/infectious waste incinerator (HMIWI), one hundred ten percent (110%) of the lowest three (3)-hour average charge rate measured during the most recent performance test demonstrating compliance with all applicable emission limits; for batch HMIWI, one hundred ten percent (110%) of the lowest daily charge rate measured during the most recent performance test demonstrating compliance with all applicable emission limits.

14. Maximum design heat input—The ability of a unit to combust a stated maximum amount of fuel per hour on a steady state basis, as determined by the physical design and physical characteristics of the unit.

15. Maximum fabric filter inlet temperature—One hundred ten percent (110%) of the lowest three (3)-hour average temperature at the inlet to the fabric filter (taken, at a minimum, once every minute) measured during the most recent performance test demonstrating compliance with the dioxin/furan emission limit.

16. Maximum flue gas temperature—One hundred ten percent (110%) of the lowest three (3)-hour average temperature at the outlet from the wet scrubber (taken, at a minimum, once every minute) measured during the most recent performance test demonstrating compliance with the mercury (Hg) emission limit.

17. Maximum potential hourly heat input—An hourly heat input used for reporting purposes when a unit lacks certified monitors to report heat input. If the unit intends to use Appendix D of 40 CFR 75 to report heat input, this value should be calculated in accordance with 40 CFR 75, using the maximum fuel flow rate and the maximum gross calorific value. If the unit intends to use a flow monitor and a diluent gas monitor, this value should be reported in accordance with 40 CFR 75, using the maximum potential flow rate and either the maximum carbon dioxide concentration (in percent CO_2) or the minimum oxygen concentration (in percent O_2).

18. Maximum potential NO_x emission rate—The NO_x emission rate of nitrogen oxides (in lb/mmBtu) calculated in accordance with section 3 of Appendix F of 40 CFR 75, using the maximum potential nitrogen oxides concentration as defined in section 2 of Appendix A of 40 CFR 75, and either the maximum oxygen concentration (in percent O_2) or the minimum carbon dioxide concentration (in percent CO_2), under all operating conditions of the unit except for unit start-up, shutdown, and upsets.

19. Maximum rated hourly heat input—A unit-specific maximum hourly heat input (mmBtu) which is the higher of the manufacturer's maximum rated hourly heat input or the highest observed hourly heat input.

20. Mechanical shoe seal—A metal sheet held vertically against the wall of the storage vessel by springs or weighted levers and is connected by braces to the floating roof. A flexible coated fabric (envelope) spans the annular space between the metal sheet and the floating roof.

21. Medical device—An instrument, apparatus, implement, machine, contrivance, implant, *in vitro* reagent, or other similar article, including any component or accessory that meets one (1) of the following conditions:

A. It is intended for use in the diagnosis of disease or other conditions, or in the cure, mitigation, treatment, or prevention of disease;

B. It is intended to affect the structure or any function of the body; or

C. It is defined in the *National Formulary* or the *United States Pharmacopoeia*, or any supplement to them.

22. Medical/infectious waste—Any waste generated in the diagnosis, treatment, or immunization of human beings or animals, in research pertaining thereto, or in the production or testing of biologicals as exempted in the applicable rule. The definition of medical/infectious waste does not include hazardous waste identified or listed under the regulations in 40 CFR 261; household waste, as defined in 40 CFR 261.4(b)(1); ash from incineration of medical/infectious waste, once the incineration process has been completed; human corpses, remains, and anatomical parts that are intended for interment or cremation; and domestic sewage materials identified in 40 CFR 261.4(a)(1).

A. Cultures and stocks of infectious agents and associated biologicals, including cultures from medical and pathological laboratories; cultures and stocks of infectious agents from research and industrial laboratories; wastes from the production of biologicals; discarded live and attenuated vaccines; and culture dishes and devices used to transfer, inoculate, and mix cultures.

B. Human pathological waste, including tissues, organs, and body parts and body fluids that are removed during surgery or autopsy, or other medical procedures, and specimens of body fluids and their containers.

C. Human blood and blood products including:

(I) Liquid waste human blood;

(II) Products of blood;

(III) Items saturated and/or dripping with human blood; and

(IV) Items that were saturated and/or dripping with human blood that are now caked with dried human blood including serum, plasma, and other blood components, and their containers, which were used or intended for use in either patient care, testing and laboratory analysis, or the development of pharmaceuticals. Intravenous bags are also included in this category.

D. Sharps that have been used in animal or human patient care or treatment or in medical, research, or industrial laboratories, including hypodermic needles, syringes (with or without the attached needle), pasteur pipettes, scalpel blades, blood vials, needles with attached tubing, and culture dishes (regardless of presence of infectious agents). Also included are other types of broken or unbroken glassware that were in contact with infectious agents, such as used slides and cover slips.

E. Animal waste including contaminated animal carcasses, body parts, and bedding of animals that were known to have been exposed to infectious agents during research (including research in veterinary hospitals), production of biologicals, or testing of pharmaceuticals.

F. Isolation wastes including biological waste and discarded materials contaminated with blood, excretions, exudates, or secretions from humans who are isolated to protect others from certain highly-communicable diseases, or isolated animals known to be infected with highly-communicable diseases.

G. Unused sharps including the following unused, discarded sharps: hypodermic needles, suture needles, syringes, and scalpel

blades.

23. Medium hospital/medical/infectious waste incinerator (HMIWI)—An HMIWI whose maximum design waste burning capacity is more than two hundred pounds (200 lbs) per hour but less than or equal to five hundred pounds (500 lbs) per hour, or a continuous or intermittent HMIWI whose maximum charge rate is more than two hundred pounds (200 lbs) per hour but less than or equal to five hundred pounds (500 lbs) per hour, or a batch HMIWI whose maximum charge rate is more than one thousand six hundred pounds (1,600 lbs) per day, but less than or equal to four thousand pounds (4,000 lbs) per day. The following are not medium HMIWI: a continuous or intermittent HMIWI whose maximum charge rate is less than or equal to two hundred pounds (200 lbs) per hour or more than five hundred pounds (500 lbs) per hour; or a batch HMIWI whose maximum charge rate is more than four thousand pounds (4,000 lbs) per day or less than or equal to one thousand six hundred pounds (1,600 lbs) per day.

24. Metal to urethane/rubber molding or casting adhesive—An adhesive intended by the manufacturer to bond metal to high density or elastomeric urethane or molded rubber materials to fabricate products such as rollers for computer printers or other paper handling equipment.

25. Metallic coating—A coating which contains more than five (5) grams of metal particles per liter of coating as applied. Metal particles are pieces of a pure elemental metal or a combination of elemental metals.

26. Metropolitan planning organization (MPO)—The policy board of an organization created as a result of the designation process in 23 U.S.C. 134(d) and in 49 U.S.C. 5303. It is the forum for cooperative transportation decision-making and is responsible for conducting the planning required under section 174 of the Clean Air Act.

27. Mid-kiln firing—Secondary firing in kiln systems by injecting fuel at an intermediate point in the kiln system using a specially-designed fuel injection mechanism for the purpose of decreasing NO_x emissions through—

A. The burning of part of the fuel at a lower temperature; and

B. The creation of reducing conditions at the point of initial combustion.

28. Milestone—The meaning given in sections 182(g)(1) and 189(c)(1) of the Clean Air Act. It consists of an emissions level and the date on which it is required to be achieved.

29. Military specification coating—A coating which has a formulation approved by a United States Military Agency for use on military equipment.

30. Minimum dioxin/furan sorbent flow rate—Ninety percent (90%) of the highest three (3)-hour average dioxin/furan sorbent flow rate (taken, at a minimum, once every hour) measured during the most recent performance test demonstrating compliance with the dioxin/furan emission limit.

31. Minimum mercury (Hg) sorbent flow rate—Ninety percent (90%) of the highest three (3)-hour average Hg sorbent flow rate (taken, at a minimum, once every hour) measured during the most recent performance test demonstrating compliance with the Hg emission limit.

32. Minimum horsepower or amperage—Ninety percent (90%) of the highest three (3)-hour average horsepower or amperage to the wet scrubber (taken, at a minimum, once every minute) measured during the most recent performance test demonstrating compliance with the applicable emission limit.

33. Minimum hydrogen chloride (HCl) sorbent flow rate—Ninety percent (90%) of the highest three (3)-hour average HCl sorbent flow rate (taken, at a minimum, once every hour) measured during the most recent performance test demonstrating compliance with the HCl emission limit.

34. Minimum pressure drop across the wet scrubber—Ninety percent (90%) of the highest three (3)-hour average pressure drop across the wet scrubber particulate matter (PM) control device (taken, at a minimum, once every minute) measured during the most recent performance test demonstrating compliance with the PM emission limit.

35. Minimum reagent flow rate—Ninety percent (90%) of the highest three (3)-hour average reagent flow rate at the inlet to the selective noncatalytic reduction technology (taken, at a minimum, once every minute) measured during the most recent performance test demonstrating compliance with the NO_x emissions limit.

36. Minimum scrubber liquor flow rate—Ninety percent (90%) of the highest three (3)-hour average liquor flow rate at the inlet to the wet scrubber (taken, at a minimum, once every minute) measured during the most recent performance test demonstrating compliance with all applicable emission limits.

37. Minimum scrubber liquor pH—Ninety percent (90%) of the highest three (3)-hour average liquor pH at the inlet to the wet scrubber (taken, at a minimum, once every minute) measured during the most recent performance test demonstrating compliance with all hydrogen chloride emission limits.

38. Minimum secondary chamber temperature—Ninety percent (90%) of the highest three (3)-hour average secondary chamber temperature (taken, at a minimum, once every minute) measured during the most recent performance test demonstrating compliance with the PM, carbon monoxide (CO), dioxin/furan, and NO_x emission limits.

39. Minor violation—A violation which possesses a small potential to harm the environment or human health or cause pollution, was not knowingly committed, and is not defined by the United States Environmental Protection Agency as other than minor.

40. Missouri Decentralized Analyzer System (MDAS)—The emissions inspection equipment that is sold by the state's contractor to licensed emissions inspection stations. The department may approve alternative equipment if the equipment described in this paragraph is no longer available. At a minimum, the vehicle emissions inspection equipment shall consist of the following contractor equipment package:

A. At least a seventeen-inch (17") Liquid Crystal Display (LCD) monitor;

B. Universal serial bus (USB) lane camera;

C. At least a four (4.0) megapixel digital camera and dock;

D. Fingerprint scanner;

E. Two hundred fifty-six (256)-megabyte USB flash drive;

F. Keyboard with plastic keyboard cover and optical mouse;

G. Printer with ink or toner cartridges and blank paper;

H. 2D barcode reader;

I. Windshield sticker printer with blank windshield stickers and thermal cartridge;

J. On-board diagnostics (OBD) vehicle interface cable with a standard Society of Automotive Engineers J1962/J1978 OBD connector;

K. OBD verification tool;

L. Low-speed or high-speed Internet connection capabilities;

M. Surge protector and uninterruptible power supply (UPS);

N. At least a three gigahertz (3.0 GHz) personal computer (Dell™ Pentium® 4 or equivalent), with Windows Vista® and one (1) gigabyte of Random Access Memory (RAM); and

O. Metal cabinet to hold all of the components described in this paragraph.

41. Missouri Department of Revenue (MDOR)—Defined as follows:

A. For the purpose of 10 CSR 10-5.381, the Missouri Department of Revenue is the state agency responsible for the oversight of vehicle registration at contract offices and via the Internet. This agency is also responsible for the registration denial method of enforcement for the vehicle emissions inspection and maintenance program; and

B. For all other purposes, Missouri Department of Revenue means the state agency that serves as the central collection agency for all state revenue with primary duties of collecting tax, registering and titling vehicles, and licensing drivers.

42. Missouri Emissions Inventory System (MoEIS)—Online

interface of the state of Missouri's air emissions inventory database.

43. Missouri performance evaluation test procedure (MOPETP)—The set of standards and test procedures for evaluating performance of Stage I/II vapor recovery control equipment and systems to be installed or that have been installed in Missouri.

44. Missouri State Highway Patrol (MSHP)—Defined as follows:

A. For the purpose of 10 CSR 10-5.381, the Missouri State Highway Patrol is the state agency responsible for the oversight of the vehicle safety inspection program and joint oversight with the department of the vehicle emissions inspection and maintenance program; and

B. For all other purposes, Missouri State Highway Patrol is the state law enforcement agency with the primary duties of enforcing the traffic laws and promoting highway safety.

45. Mitigation measure—Any method of reducing emissions of the pollutant or its precursor taken at the location of the federal action and used to reduce the impact of the emissions of that pollutant caused by the action.

46. Mobile equipment—Any equipment that is physically capable of being driven or drawn on a roadway including, but not limited to, the following types of equipment:

A. Construction vehicles such as mobile cranes, bulldozers, concrete mixers, etc.;

B. Farming equipment such as a wheel tractor, plow, pesticide sprayer, etc.;

C. Hauling equipment such as truck trailers, utility bodies, etc.; and

D. Miscellaneous equipment such as street cleaners, golf carts, etc.

47. Model year—The manufacturer's annual production period which includes January 1 of such calendar year. If the manufacturer has no annual production period, model year shall refer to the calendar year.

48. Modeling domain—A geographic area covered by an air quality model.

49. Modification—Defined as follows:

A. For the purposes of 10 CSR 10-5.490 and 10 CSR 10-6.310, modification is an increase in the permitted volume design capacity of the landfill by either horizontal or vertical expansion based on its most recent permitted design capacity; modification does not occur until the owner or operator commences construction on the horizontal or vertical expansion;

B. For the purpose of 10 CSR 10-6.165, modification is any change to a source of odor emissions or source operations, including odor controls, that causes or could cause an increase in potential odor emissions; and

C. For all other purposes, modification means any physical change to, or change in method of operation of, a source operation or attendant air pollution control equipment which would cause an increase in potential emissions of any air pollutant emitted by the source operation.

50. Modification, Title I—See Title I modification.

51. Modified hospital/medical/infectious waste incinerator (HMIWI)—Any change to an HMIWI unit after the effective date of these standards such that the cumulative costs of the modifications, over the life of the unit, exceed fifty percent (50%) of the original cost of the construction and installation of the unit (not including the cost of any land purchased in connection with such construction or installation) updated to current costs, or the change involves a physical change in or change in the method of operation of the unit which increases the amount of any air pollutant emitted by the unit for which standards have been established under section 129 or section 111 of the Clean Air Act.

52. Mold release—A coating applied to a mold surface to prevent the mold piece from sticking to the mold as it is removed, or to an aerospace component for purposes of creating a form-in-place seal.

53. Mold seal coating—The initial coating applied to a new mold or a repaired mold to provide a smooth surface which, when coated with a mold-release coating, prevents products from sticking to the mold.

54. Monitoring system—Any monitoring system that meets the requirements as described in a specific rule, including a continuous emissions monitoring system, an excepted monitoring system, or an alternative monitoring system.

55. Monthly throughput—The total volume of gasoline that is loaded into all gasoline storage tanks during a month, as calculated on a rolling thirty (30)-day average.

56. Motor tricycle—A motor vehicle operated on three (3) wheels, including a motorcycle with any conveyance, temporary or otherwise, requiring the use of a third wheel.

57. Motor vehicle—Any self-propelled vehicle.

58. Motor vehicle adhesive—An adhesive, including glass bonding adhesive, used at an installation that is not an automobile or light duty truck assembly coating installation, applied for the purpose of bonding two (2) motor vehicle surfaces together without regard to the substrates involved.

59. Motor vehicle bedliner—A multi-component coating, used at an installation that is not an automobile or light duty truck assembly coating installation, applied to a cargo bed after the application of topcoat to provide additional durability and chip resistance.

60. Motor vehicle cavity wax—A coating, used at an installation that is not an automobile or light duty truck assembly coating installation, applied into the cavities of the motor vehicle primarily for the purpose of enhancing corrosion protection.

61. Motor vehicle deadener—A coating, used at an installation that is not an automobile or light duty truck assembly coating installation, applied to selected motor vehicle surfaces primarily for the purpose of reducing the sound of road noise in the passenger compartment.

62. Motor vehicle gasket/gasket-sealing material—A fluid, used at an installation that is not an automobile or light duty truck assembly coating installation, applied to coat a gasket or replace and perform the same function as a gasket. Automobile and light duty truck gasket/gasket-sealing material includes room temperature vulcanization seal material.

63. Motor vehicle glass-bonding primer—A primer, used at an installation that is not an automobile or light duty truck assembly coating installation, applied to windshield or other glass, or to body openings, to prepare the glass or body opening for the application of glass-bonding adhesives or the installation of adhesive-bonded glass. Motor vehicle glass bonding primer includes glass bonding/cleaning primers that perform both functions (cleaning and priming of the windshield or other glass or body openings) prior to the application of adhesive or the installation of adhesive-bonded glass.

64. Motor vehicle lubricating wax/compound—A protective lubricating material, used at an installation that is not an automobile or light duty truck assembly coating installation, applied to motor vehicle hubs and hinges.

65. Motor vehicle sealer—A high viscosity material, used at an installation that is not an automobile or light duty truck assembly coating installation, generally, but not always, applied in the paint shop after the body has received an electrodeposition primer coating and before the application of subsequent coatings (e.g., primer-surfacer). Such materials are also referred to as sealant, sealant primer, or caulk.

66. Motor vehicle trunk interior coating—A coating, used at an installation that is not an automobile or light duty truck assembly coating installation, applied to the trunk interior to provide chip protection.

67. Motor vehicle underbody coating—A coating, used at an installation that is not an automobile or light duty truck assembly coating installation, applied to the undercarriage or firewall to prevent corrosion and/or provide chip protection.

68. Motor vehicle weatherstrip adhesive—An adhesive, used at

an installation that is not an automobile or light duty truck assembly coating installation, applied to weatherstripping materials for the purpose of bonding the weatherstrip material to the surface of the motor vehicle.

69. Motorcycle—A motor vehicle operated on two (2) wheels.

70. Multi-colored coating—A coating which exhibits more than one (1) color when applied and which is packaged in a single container and applied in a single coat.

71. Multi-component coating—A coating requiring the addition of a separate reactive resin, commonly known as a catalyst or hardener, before application to form an acceptable dry film.

72. Multi-day violation—A violation which has occurred on or continued for two (2) or more consecutive or nonconsecutive days.

73. Multiple-violation penalty—The sum of individual administrative penalties assessed when two (2) or more violations are included in the same complaint or enforcement action.

74. Multipurpose construction adhesive—An adhesive intended by the manufacturer for use in the installation or repair of various construction materials, including but not limited to drywall, subfloor, panel, fiberglass reinforced plastic (FRP), ceiling tile, and acoustical tile.

75. Municipal solid waste (MSW) landfill—An entire disposal facility in a contiguous geographical space where household waste is placed in or on land. An MSW landfill may also receive other types of Resource Conservation and Recovery Act (RCRA) Subtitle D wastes per 40 CFR 257.2, such as commercial solid waste, nonhazardous sludge, conditionally exempt small quantity generator waste, and industrial solid waste. Portions of an MSW landfill may be separated by access roads. An MSW landfill may be publicly or privately owned. An MSW landfill may be a new MSW landfill, an existing MSW landfill, or a lateral expansion.

76. Municipal solid waste (MSW) landfill emissions—Gas generated by the decomposition of organic waste deposited in an MSW landfill or derived from the evolution of organic compounds in the waste.

(3) General Provisions. Common reference tables are provided in this section of the rule.

(C) Table 3—Hazardous Air Pollutants.

CAS #	Hazardous Air Pollutant
75070	Acetaldehyde
60355	Acetamide
75058	Acetonitrile
98862	Acetophenone
53963	2-Acetylaminofluorene
107028	Acrolein
79061	Acrylamide
79107	Acrylic acid
107131	Acrylonitrile
107051	Allyl chloride
92671	4-Aminobiphenyl
62533	Aniline
90040	o-Anisidine
1332214	Asbestos
71432	Benzene (including from gasoline)
92875	Benzidine
98077	Benzotrichloride
100447	Benzyl chloride
92524	Biphenyl
117817	Bis(2-ethylhexyl)phthalate (DEHP)
542881	Bis(chloromethyl)ether
75252	Bromoform
106990	1,3-Butadiene
156627	Calcium cyanamide
133062	Captan
63252	Carbaryl
75150	Carbon disulfide
56235	Carbon tetrachloride
463581	Carbonyl sulfide
120809	Catechol
133904	Chloramben
57749	Chlordane
7782505	Chlorine
79118	Chloroacetic acid
532274	2-Chloroacetophenone
108907	Chlorobenzene
510156	Chlorobenzilate
67663	Chloroform
107302	Chloromethyl methyl ether
126998	Chloroprene
1319773	Cresols/Cresylic acid (isomers and mixture)
108394	m-Cresol
95487	o-Cresol
106445	p-Cresol
98828	Cumene
94757	2,4-D, salts and esters
3547044	DDE
334883	Diazomethane
132649	Dibenzofurans
96128	1,2-Dibromo-3-chloropropane
84742	Dibutylphthalate
106467	1,4-Dichlorobenzene(p)
91941	3,3-Dichlorobenzidene
111444	Dichloroethyl ether (Bis(2-chloroethyl)ether)
542756	1,3-Dichloropropene
62737	Dichlorvos
111422	Diethanolamine
121697	N,N-Diethyl aniline (N,N-Dimethylaniline)
64675	Diethyl sulfate
119904	3,3-Dimethoxybenzidine
60117	Dimethyl aminoazobenzene
119937	3,3-Dimethyl benzidine
79447	Dimethyl carbamoyl chloride
68122	Dimethyl formamide
57147	1,1-Dimethyl hydrazine
131113	Dimethyl phthalate
77781	Dimethyl sulfate
534521	4,6-Dinitro-o-cresol and salts
51285	2,4-Dinitrophenol
121142	2,4-Dinitrotoluene
123911	1,4-Dioxane (1,4-Diethyleneoxide)
122667	1,2-Diphenylhydrazine
106898	Epichlorohydrin (1-Chloro-2,3-epoxypropane)
106887	1,2-Epoxybutane
140885	Ethyl acrylate
100414	Ethyl benzene
51796	Ethyl carbamate (Urethane)
75003	Ethyl chloride (Chloroethane)
106934	Ethylene dibromide (1,2-Dibromoethane)
107062	Ethylene dichloride (1,2-Dichloroethane)
107211	Ethylene glycol
151564	Ethylene imine (Aziridine)
75218	Ethylene oxide
96457	Ethylene thiourea
75343	Ethylidene dichloride (1,1-Dichloroethane)
50000	Formaldehyde
76448	Heptachlor
118741	Hexachlorobenzene
87683	Hexachlorobutadiene
77474	Hexachlorocyclopentadiene
67721	Hexachloroethane
822060	Hexamethylene-1,6-diisocyanate
680319	Hexamethylphosphoramide
110543	Hexane
302012	Hydrazine

7647010	Hydrochloric acid
7664393	Hydrogen fluoride (hydrofluoric acid)
123319	Hydroquinone
78591	Isophorone
58899	Lindane (all isomers)
108316	Maleic anhydride
67561	Methanol
72435	Methoxychlor
74839	Methyl bromide (Bromomethane)
74873	Methyl chloride (Chloromethane)
71556	Methyl chloroform (1,1,1-Trichloroethane)
60344	Methyl hydrazine
74884	Methyl iodide (Iodomethane)
108101	Methyl isobutyl ketone (Hexone)
624839	Methyl isocyanate
80626	Methyl methacrylate
1634044	Methyl tert butyl ether
101144	4,4-Methylene bis(2-chloroaniline)
75092	Methylene chloride (Dichloromethane)
101688	Methylene diphenyl diisocyanate (MDI)
101779	4,4-Methylenedianiline
91203	Naphthalene
98953	Nitrobenzene
92933	4-Nitrobiphenyl
100027	4-Nitrophenol
79469	2-Nitropropane
684935	N-Nitroso-N-methylurea
62759	N-Nitrosodimethylamine
59892	N-Nitrosomorpholine
56382	Parathion
82688	Pentachloronitrobenzene (Quintobenzene)
87865	Pentachlorophenol
108952	Phenol
106503	p-Phenylenediamine
75445	Phosgene
7803512	Phosphine
7723140	Phosphorus
85449	Phthalic anhydride
1336363	Polychlorinated biphenyls (Aroclors)
1120714	1,3-Propane sultone
57578	beta-Propiolactone
123386	Propionaldehyde
114261	Propoxur (Baygon)
78875	Propylene dichloride (1,2-Dichloropropane)
75569	Propylene oxide
75558	1,2-Propylenimine (2-Methylaziridine)
91225	Quinoline
106514	Quinone
100425	Styrene
96093	Styrene oxide
1746016	2,3,7,8-Tetrachlorodibenzo-p-dioxin
79345	1,1,2,2-Tetrachloroethane
127184	Tetrachloroethylene (Perchloroethylene)
7550450	Titanium tetrachloride
108883	Toluene
95807	2,4-Toluene diamine
584849	2,4-Toluene diisocyanate
95534	o-Toluidine
8001352	Toxaphene (chlorinated camphene)
120821	1,2,4-Trichlorobenzene
79005	1,1,2-Trichloroethane
79016	Trichloroethylene
95954	2,4,5-Trichlorophenol
88062	2,4,6-Trichlorophenol
121448	Triethylamine
1582098	Trifluralin
540841	2,2,4-Trimethylpentane
108054	Vinyl acetate
593602	Vinyl bromide (bromoethene)
75014	Vinyl chloride
75354	Vinylidene chloride (1,1-Dichloroethylene)
1330207	Xylenes (isomers and mixture)
108383	m-Xylenes
95476	o-Xylenes
106423	p-Xylenes
0	Antimony Compounds
0	Arsenic Compounds (inorganic including arsine)
0	Beryllium Compounds
0	Cadmium Compounds
0	Chromium Compounds
0	Cobalt Compounds
0	Coke Oven Emissions
0	Cyanide Compounds[1]
0	Glycol ethers[2]
0	Lead Compounds
0	Manganese Compounds
0	Mercury Compounds
0	Fine mineral fibers[3]
0	Nickel Compounds
0	Polycyclic Organic Matter[4]
0	Radionuclides (including radon)[5]
0	Selenium Compounds

Note: For all listings in this table that contain the word compounds and for glycol ethers, the following applies: Unless otherwise specified, these listings are defined as including any unique chemical substance that contains the named chemical (that is, antimony, arsenic, and the like) as part of that chemical's infrastructure.

[1] X'CN where X–H' or any other group where a formal dissociation may occur, for example, KCN or $Ca(CN)_2$.

[2] Includes mono- and diethers of ethylene glycol, diethylene glycol and triethylene glycol R-(OCH_2CH_2)n-OR' where n = 1, 2, or 3; R = Alkyl or aryl groups; R' = R, H, or groups which, when removed, yield glycol ethers with the structure R-(OCH_2CH_2)n-OH. Polymers and ethylene glycol monobutyl ether are excluded from the glycol category.

[3] Includes glass microfibers, glass wool fibers, rock wool fibers, and slag wool fibers, each characterized as respirable (fiber diameter less than three and one-half (3.5) micrometers) and possessing an aspect ratio (fiber length divided by fiber diameter) greater than or equal to three (3), as emitted from production of fiber and fiber products.

[4] Includes organic compounds with more than one (1) benzene ring, and which have a boiling point greater than or equal to one hundred degrees Celsius (100 °C).

[5] A type of atom which spontaneously undergoes radioactive decay.

Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 40—Family Support Division
Chapter 2—Income Maintenance

ORDER OF RULEMAKING

By the authority vested in the Department of Social Services, Family Support Division, under section 208.027, RSMo Supp. 2012, the division adopts a rule as follows:

13 CSR 40-2.400 Definitions for the Screening and Testing for the Illegal Use of Controlled Substances by Temporary Assistance Applicants and Recipients **is adopted**.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on August 1, 2012 (37 MoReg 1149–1150). No changes have been made to the text of the proposed rule, so it is not reprinted here. This proposed rule becomes effective thirty (30) days after the publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The Family Support Division (FSD) received two (2) letters commenting on the proposed rule. Some of the comments were similar in nature. Therefore, due to the similarity in both the language and general subject matter of these comments, they have been grouped together.

COMMENT #1: Two (2) comments from the Missouri Catholic Conference Catholic Charities of Missouri, LLC and from Legal Services of Eastern Missouri, Inc. asserted similar concerns regarding 13 CSR 40-2.400(2)—Appropriate Substance Abuse Treatment Program. The comments generally expressed that the definition of "appropriate substance abuse treatment program" is too narrow in that it limits substance abuse treatment programs to ones that have contracted with the Department of Mental Health (DMH) to perform Comprehensive Substance Abuse Treatment and Rehabilitation (CSTAR) services. The comments were concerned that substance abuse treatment programs in Missouri are already overloaded due to limited capacity and will not be able to adequately handle the increase in individuals referred for treatment by these rules.

Commenters urged that the state should allow participation in other treatment programs besides CSTAR to count as an "appropriate" substance abuse treatment program. The commenters said that the definition should provide additional avenues for individuals to demonstrate "good faith" cooperation with the drug abuse treatment requirement proposed at 13 CSR 40-2.430 to increase the chance of successful treatment and avoid penalizing individuals who want to comply with the rules and obtain treatment. The commenters urged that the definition should be broadened to include placement on a wait list for services from a substance abuse treatment program, voluntary attendance at a Narcotics Anonymous program pending enrollment into a DMH approved substance abuse treatment program, and/or other appropriate methods based upon the individual's circumstances.

Commenters also expressed concern the individual while waiting for treatment would lose Temporary Assistance (TA) benefits.
RESPONSE: Section 208.027.1, RSMo Supp. 2012, states that the recipient who tested positive for the use of a controlled substance will be referred to an appropriate substance abuse treatment program approved by the Division of Alcohol and Drug Abuse within DMH. The DMH Division of Alcohol and Drug Abuse approved the CSTAR program as the appropriate substance abuse treatment for TA recipients who are referred under the authority of this rule. CSTAR programs offer a flexible combination of clinical and supportive services, to include temporary living arrangements when appropriate, that vary in duration and intensity depending on the needs of the participant. Specialized services are available for pregnant women and women and their children. DMH will provide priority assessment and admission to individuals referred to treatment under the authority of this rule. Section 208.027.1, RSMo Supp. 2012, states that the applicant or recipient "shall continue to receive benefits while participating in the treatment program." Therefore, the individual's TA benefits will not be impacted while an individual is waiting for treatment. No changes have been made to the rule as a result of this comment.

COMMENT #2: Two (2) comments from the Missouri Catholic Conference Catholic Charities of Missouri, LLC and from Legal Services of Eastern Missouri, Inc. asserted similar concerns regarding 13 CSR 40-2.400(4)—Entry into the Substance Abuse Treatment Program. The commenters disagreed with the proposed definition of "entry into the substance abuse treatment program," i.e., "enrolled in the Department of Mental Health's consumer information system by an appropriate treatment provider." The commenters believed that the definition was unclear and could exclude individuals who were on a waiting list and therefore unable to be placed into the consumer information system. TA recipients on a waiting list should not be denied benefits and the proposed rule should reflect this. The commenters argued that the enabling statute for the proposed rule does not require enrollment in DMH's consumer information system and the rule should not do so either. The commenters also argued that the definition of Entry into the Substance Abuse Treatment Program should be expanded to include other forms of drug treatment to increase the chance of successful treatment and to avoid penalizing individuals who want to comply with the rules.
RESPONSE: This comment is unclear. There are two (2) distinctly different issues raised by the comments in #2. These issues will be addressed individually.

1. The DMH enrollment process applies to all people that it serves, including people referred under this statute and rule. FSD also incorporates its response to comment #1 as if it were set out here. No changes have been made to the rule as a result of this comment.

2. The commenter indicated that TA recipients on a waiting list should not be denied benefits and the proposed rule should reflect this. Section 208.027.1, RSMo Supp. 2012, is clear that TA recipients who are waiting for treatment will continue to receive TA benefits if they are otherwise eligible. No changes have been made to the rule as a result of this comment.

COMMENT #3: Legal Services of Eastern Missouri, Inc. commented on 13 CSR 40-2.400(4) asserting that some individuals who test positive will be unable to obtain treatment because they have not met the diagnostic requirements for substance abuse treatment programs.
RESPONSE: If an individual is referred to treatment and, following the clinical assessment, was determined not to meet criteria for admission, the CSTAR provider will follow the procedure of sending a letter or other official notice to FSD verifying the recipient does not need treatment, which satisfies the "successful completion" requirement. The individual will not lose TA benefits as a result of this decision. No changes have been made to the rule as a result of this comment.

COMMENT #4: Missouri Catholic Conference Catholic Charities of Missouri, LLC commented on 13 CSR 40-2.400(8)—Misdemeanor or felony drug offense. The commenter believes using an arrest for a drug offense as grounds for testing presupposes guilt in conflict with the foundation of our legal system that one is innocent until guilty. The commenter provided the following example: If an indigent person lives in a home with a drug offender and in is the wrong place at the wrong time, they could be arrested even though they have no proclivity for drug use.
RESPONSE: The arrest does not in itself trigger the decision to terminate the individual's TA benefits. The arrest gives rise to a reasonable and individualized suspicion that the recipient in question may have used a controlled substance illegally and therefore must submit to a drug test in order to remain eligible for benefits under the TA program. No changes have been made to the rule as a result of this comment.

COMMENT #5: Legal Services of Eastern Missouri, Inc. commented regarding 13 CSR 40-2.400(10)—Reasonable cause. The commenter objected to the proposed definition of "reasonable cause" which the commenter declared was synonymous with "reasonable suspicion" under the proposed rule. "Reasonable cause" would be deemed to exist "based on the response to the screening tool" or when Missouri Highway Patrol records establish that the individual has been arrested or convicted of a misdemeanor or felony drug offense within the last twelve (12) months. The commenter stated that the lack of any description of the screening tool makes it difficult to comment on whether such a screening tool would offer a sound basis for a finding of reasonable cause. The commenter stated

that it is impossible to determine whether the screening tool will take into account individuals suffering from mental illness, developmental disabilities, or functional illiteracy in establishing reasonable cause. The commenter said allowing a finding of "reasonable cause" based on a mere arrest is arbitrary and unreasonable since arrests are based merely on allegations that individuals have not had the opportunity to challenge in court and in fact may even be based on speculation or a mistake. The commenter recommended that the screening tool be described in the rules and that the provisions that allow reasonable cause based upon an arrest be removed.
RESPONSE: No changes have been to the rule as a result of this comment.

COMMENT #6: Missouri Catholic Conference Catholic Charities of Missouri, LLC commented regarding 13 CSR 40-2.400(15)—Treatment provider. The commenter asserted the proposed definition of "Treatment provider" is very narrow. The commenter said CSTAR programs presently do not have sufficient space to accommodate all of the persons in need of treatment. There are other programs that provide treatment for addiction that could offer help to those in need of services if this definition were expanded. The commenter claimed that limiting treatment options poses a hardship for low-income people.
RESPONSE: FSD would refer to its response to comment #1 and incorporates the same here. No changes have been made to the rule as a result of this comment.

COMMENT #7: Missouri Catholic Conference Catholic Charities of Missouri, LLC; Missouri Association of Social Welfare; The American Civil Liberties Union of Missouri and Kansas; Clinical Law Offices, Saint Louis University School of Law; Catholic Charities of Kansas City–St. Joseph Caritas Center; and Alice Kitchen, LSCSW, MPA made similar comments to section 208.027, RSMo Supp. 2012. The commenters asserted that the state of Missouri by passing this statute is making the presumption that indigent Missourians who apply for and receive temporary welfare benefits are more apt to use illicit drugs than are other recipients of state benefits. The comments believed that there is no evidence to support this presumption. Catholic Charities of Kansas City–St. Joseph Caritas Center and Alice Kitchen asserted the legislation was discriminatory because it targeted TA recipients because they get a state subsidy. Other individuals who get a state subsidy are not drug tested. Thus singling out TA recipients and adding another layer of generalizations is not helpful. Clinical Law Offices, Saint Louis University School of Law asserted the proposed rules were not designed to achieve their purpose and requiring TA recipients to submit to drug testing will substantially harm these individuals by engulfing them in fear, anxiety, and a lack of trust. The comments assert that the available evidence shows that the rate of illicit drug use among recipients of TA benefits falls significantly below the rate of illicit drug use among other members of the population as a whole or those other segments of population that receive other forms of government assistance. The American Civil Liberties Union of Missouri and Kansas cited to the case of *Lebron v. Wilkins*, 820 F. Supp.2d 1273, 1277 (M.D. Fla. 2011) as support noting that this case found that "drug use among the tested TA population was found to be significantly lower than drug use among welfare recipients in other national studies." Clinical Law Offices, Saint Louis University School of Law concluded the proposed rules constitute an attempt to target the poor of our communities is misguided. Catholic Charities of Kansas City–St. Joseph Caritas Center said that individuals living in poverty are already dealing with a number of stereotypes and generalizations that negatively impact their opportunities at success. Thus, singling out TA recipients and adding yet another layer of such generalization does not appear to be helpful. Further, the commenter said that if the state of Missouri genuinely wants to ensure that state dollars are not being used to support illegal drug use, then such a standard should be applied equally across all recipients of state dollars.
RESPONSE: This is a comment on the statute itself, and the policy of the statute is beyond the scope of the rulemaking procedure. No changes have been made to the rule as a result of this comment.

COMMENT #8: Missouri Catholic Conference Catholic Charities of Missouri, LLC asserted that many of the clients served by the commenter's organization struggle with physical and mental disabilities that prevent them from leading normal lives and make breaking the cycle of poverty even more challenging. The commenter said that adding another hurdle for them to receive temporary financial assistance is just one more assault on their dignity as human beings.
RESPONSE: This is a comment on the statute itself, and the policy of the statute is beyond the scope of the rulemaking procedure. No changes have been made to the rule as a result of this comment.

COMMENT #9: Good Shepherd Children and Family Services asserted reliable income (i.e., an ability to provide for dependent children) is often a key factor in decisions to place children in foster care or to reunify families involved in the foster care system. The comment asserted that any rules that tend to impact individuals differentially by denying or redirecting TA benefits would also be expected to make it more likely that their children are taken into state custody and/or more likely that their children will remain in the state's custody longer. As such, the commenter believed the rules may have an unintended and negative social and fiscal impact in Missouri.
RESPONSE: This is a comment on the statute itself, and the policy of the statute is beyond the scope of the rulemaking procedure. No changes have been made to the rule as a result of this comment.

COMMENT #10: Alice Kitchen, LSCSW, MPA asserted that section 208.027, RSMo Supp. 2012, requires drug testing of those suspected of using controlled substances and not the more abused drugs, namely alcohol and prescription drugs.
RESPONSE: This is a comment on the statute itself, and the policy of the statute is beyond the scope of the rulemaking procedure. No changes have been made to the rule as a result of this comment.

COMMENT #11: Alice Kitchen, LSCSW, MPA and Catholic Charities of Kansas City–St. Joseph Caritas Center asserted that the requirement in section 208.027 RSMo Supp. 2012, for state staff to report TA recipients who test positive on a drug test or refuse to take a drug test to the Children's Division for suspected abuse or neglect raises several potential concerns. Alice Kitchen, LSCSW, MPA asserted the current definition does not include this as a reason to suspect child abuse or neglect. Ms. Kitchen asserted that Children's Division staff will be spending time on these reports that do not rise to the level of the state statute when more serious cases that need immediate attention could be delayed. Catholic Charities of Kansas City–St. Joseph Caritas Center asserted the number of children coming into foster care is increasing rapidly in some counties in Missouri, which has caused an overloaded child welfare system. Refusing a drug test is certainly not child abuse, and while child safety is profoundly important, drug use by a parent in and of itself is not child abuse either. Forcing more hotline calls in situations where there are no identified concerns of child abuse/neglect could very likely further burden Children's Division investigative units that are already experiencing high caseloads and call volumes. Catholic Charities of Kansas City–St. Joseph Caritas Center asserted foster care hotlines and cases cost the state a substantial amount of money to service; increasing that volume for situations that potentially only stem from a failed or refused drug test would seem to have the exact opposite fiscal impact than what was intended regarding drug testing for TA benefits.
RESPONSE: This is a comment on the statute itself, and the policy of the statute is beyond the scope of the rulemaking procedure. No changes have been made to the rule as a result of this comment.

COMMENT #12: Alice Kitchen, LSCSW, MPA and the Catholic Charities of Kansas City–St. Joseph Caritas Center asserted the cost to implement this legislation is not the best possible usage of public funding and does not meet the goals and objectives of TA. Alice Kitchen, LSCSW, MPA asserted the cost could be as high as $6.7 million to implement drug testing. She asserted the Missouri state budget already has a shortfall of $50 to $60 million not to include this expense.
RESPONSE: This is a comment on the statute itself, and the policy of the statute is beyond the scope of the rulemaking procedure. No changes have been made to the rule as a result of this comment.

COMMENT #13: Catholic Charities of Kansas City–St. Joseph Caritas Center asserted that placing drug testing requirements on TA benefits in such a manner increases the likelihood that an immediate need will not be met. The commenter said considering the majority of TA recipients are children, in many cases that unmet need will directly impact a child. The commenter said it has been shown in other states where similar rules have been introduced, it does not improve the state's budget situation, primarily because the infrastructure and processes needed for implementation of such procedures are substantial. The practice of drug testing as a requirement for state funded assistance and support does not appear to be an effective measure when all things are considered, and it certainly is not fair or effective when the standard is only applied to the state's most vulnerable populations.
RESPONSE: This is a comment on the statute itself, and the policy of the statute is beyond the scope of the rulemaking procedure. No changes have been made to the rule as a result of this comment.

COMMENT #14: Catholic Charities Archdiocese of Saint Louis commented it noted a woeful lack of understanding for those who suffer from dual diagnosis of mental health and drug addiction. Funding for mental health and addiction treatment is being reduced. Recipients are denied assistance while waiting months to begin treatment. The commenter's organization recognizes that few people recover with one (1) attempt and addiction is often a lifelong condition. The commenter said shall these people be denied the benefits that help them overcome their addiction?
RESPONSE: This is a comment on the statute itself, and the policy of the statute is beyond the scope of the rulemaking procedure. No changes have been made to the rule as a result of this comment.

COMMENT #15: Alice Kitchen, LSCSW, MPA commented that state workers in FSD already work with TA recipients around social obstacles such as mental illness, drug/alcohol abuse, and domestic violence to connect them with resources to alleviate problems and promote stability. This makes it evident that this legislation is misguided. And who has the most to lose? Vulnerable children caught between their parent's behavior and highly judgmental elected officials. The commenter claimed that the only entities that stand to benefit are the drug testing companies. This is mean-spirited and an embarrassment to our citizens. This reminds me of the quote that says, "the justice of a society is not measured by how it treats its best but rather how it treats the most vulnerable among them."
RESPONSE: This is a comment on the statute itself, and the policy of the statute is beyond the scope of the rulemaking procedure. No changes have been made to the rule as a result of this comment.

Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 40—Family Support Division
Chapter 2—Income Maintenance

ORDER OF RULEMAKING

By the authority vested in the Department of Social Services, Family Support Division, under section 208.027, RSMo Supp. 2012, the division adopts a rule as follows:

13 CSR 40-2.410 is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on August 1, 2012 (37 MoReg 1150–1153). The sections with changes are reprinted here. This proposed rule becomes effective thirty (30) days after the publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The Family Support Division (FSD) received nine (9) letters commenting on the proposed rule. Some of the comments were similar in nature. Therefore, due to the similarity in both the language and general subject matter of these comments, they have been grouped together.

COMMENT #1: Missouri Catholic Conference Catholic Charities of Missouri, LLC; Missouri Association of Social Welfare; The American Civil Liberties Union of Missouri and Kansas; Catholic Charities of Kansas City–St. Joseph Caritas Center; Clinical Law Offices, Saint Louis University School of Law; Catholic Charities Archdiocese of Saint Louis; Good Shepherd Children and Family Services; Queen of Peace Center; and Legal Services of Eastern Missouri, Inc. asserted similar comments regarding 13 CSR 40-2.410(1). The comments in general objected to the lack of any detail regarding the screening tool that the state will use to determine reasonable cause. The comments asserted that this lack of detail makes it impossible to determine whether such a screening tool will be effective or appropriate for establishing a "reasonable cause" or whether it will be subjective, biased arbitrary, or burdensome for Temporary Assistance (TA) recipients. Legal Services of Eastern Missouri, Inc. urged that FSD adopt the "screen and refer" method adopted by other states. Other states use a paper and pencil test to identify those who should be sent for chemical testing. The commenter urged that other "paper inventories" may also be effective, but would involve questionnaires, which would require some time to complete. The commenter noted that such tests may be a deterrent to TA recipients and would require additional training of FSD staff for them to be proficient in administering these tests.

Other negative effects asserted by the commenters due to the alleged lack of detail about the screening tool are summarized as follows:

1. Clinical Law Offices, Saint Louis University School of Law and the Missouri Catholic Conference Catholic Charities of Missouri, LLC asserted it is impossible to determine whether the screening tool will take into account individuals suffering from mental illness, developmental disabilities, functional illiteracy, or ability to comprehend in establishing reasonable cause so such challenges do not constitute failure to "cooperate";

2. Clinical Law Offices, Saint Louis University School of Law asserted the basis for the development of the screening tool and whether it was developed by the FSD or a third party are not stated. The issuance of the screening tool and its accuracy and results should be completed by a third party to ensure complete neutrality;

3. Catholic Charities Archdiocese of Saint Louis asserted there is no language requirement, and there is no recognition of problems of mental health that lead to drug use. An artificial time frame does not equate to our experience as a treatment provider. What happens with those who refuse to incriminate themselves or refuse to submit to testing;

4. The American Civil Liberties Union of Missouri and Kansas asserted the proposed rule fails to identify the specific screening tool that will be used and does not indicate whether the division's employees who administer the screening tool will be appropriately licensed and trained to administer such instruments. While drug screening assessment instruments exist and are in common use by licensed drug treatment counselors, it is not clear that the screening instrument chosen by the division has been proven to be particularly

effective or trustworthy. Nor is it readily apparent that such screening instruments are appropriate for use among a population that has not otherwise been identified as having a potential substance abuse problem. Ordinarily, people complete such screening measures after they have already been identified as having a potential substance abuse problem. Typically, such initial identification involves being arrested for driving under the influence or having failed a drug or alcohol test. At the very least, the division should specifically identify the screening instrument that it intends to use so that interested parties can assess that measure and make informed comments about its use as proposed. Moreover, the selection of the screening tool should take into consideration the applicant/recipient's ability to comprehend, and should be simple enough so that barriers such as literacy, language differences, and mental health challenges do not constitute failure to "cooperate." Finally, the division employees administering any screening instrument should be appropriately trained and, if required by law, licensed to administer such instrument;

5. Good Shepherd Children and Family Services asserted effective and accurate screening and assessment of substance use and abuse requires evidence-based screening tools and a trained clinician. The rules are vague about the screening process and training that will be needed to implement the screening effectively. The rules do not indicate whether the division's employees who administer the screening tool will be appropriately licensed and trained to administer such instruments. Such a subjective approach is arbitrary and open to bias; it is likely to be a particular burden for Good Shepherd clients, who tend to struggle disproportionately from mental illness, developmental disability, and/or functional illiteracy. In addition, Good Shepherd clients whose children have been removed from their care by the Department of Social Services may be particularly likely to approach dealings with the department with suspicion or resistance, increasing the likelihood that a purely subjective screening process will identify them as being in need of testing;

6. Catholic Charities of Kansas City–St. Joseph Caritas Center asserted the regulatory language regarding the initial screening process does not specify an objective screening process or protocol. Identifying "reasonable cause" of illegal drug use is a difficult process, even when utilizing evidenced based screening tools administered by trained professionals. Without any specificity as to what this process will consist of, what tools will be used, and who will be tasked with implementing this process, there stands the possibility that screening will be subjective and arbitrary; and

7. Legal Services of Eastern Missouri, Inc. asserted that the proposed rule be amended to include a specific description of the screening tool and that, upon amending the rules in this manner, another thirty- (30-) day comment period should be provided to the public to enable interested individuals to review the screening process and to comment on the screening process.

RESPONSE: The screening tool was selected in consultation with the Department of Mental Health (DMH). No changes have been made to the rule as a result of this comment.

COMMENT #2: Legal Services of Eastern Missouri, Inc. commented that it is impossible to determine from 13 CSR 40-2.410(1) or the rules in general whether the assessment tool will ask TA recipients for information regarding legitimate medications—whether prescribed or not—that could potentially cause a false positive. Individuals using codeine or morphine that is lawfully prescribed to treat pain may test positive in a test for opiates. The commenter asserted an individual using Phenobarbital lawfully prescribed for a seizure disorder or other condition will test positive for barbiturates. An individual who is lawfully prescribed Valium will test positive on a test for benzodiazepines. Moreover, the commenter claimed, cough medicine, Tylenol, Sudafed, and nasal sprays are all known to cause false positives, and they are not routinely prescribed medication. If there are no questions regarding medications or medical conditions, then the burden of proof rests entirely upon individuals with disabilities to prove that the medication was the reason for the positive test. The commenter claimed the Equal Employment Opportunity Commission has long recognized the possibility that drug testing could result in false positives from disability-related lawful medication use. The commenter asserted the failure to include such questions would violate the Americans with Disabilities Act (ADA) by imposing "eligibility criteria that screen out or tend to screen out an individual with a disability. . . from fully and equally enjoying any service, program, or activity unless such criteria can be shown to be necessary for the provision of the service, program, or activity being offered" (in this case, the services and activities offered by the Missouri TA program) 28 CFR 35.130(b)(8). The commenter asserted the state should not take adverse action against individuals with disabilities that have valid medical reasons for a positive test and assume that it will be straightened out later in the hearing process where the individual has the burden to prove (under FSD's proposed hearing regulation) a valid medical reason as an affirmative defense.

The commenter asserted the Department of Health and Human Services has made clear that disclosure of a disability to a TA agency must be voluntary. Questions about prescription medication use are disability-related. Therefore, the commenter claimed the regulations should require that the screening tool seek to obtain information, voluntarily, regarding legitimate medication for physical and/or mental conditions that lawfully are considered disabilities under the ADA. Moreover, the commenter asserted, the regulations should require eligibility specialists to explain that the purpose of screening for medication and/or medical conditions is to determine whether the individual has medication or a medical condition that could potentially cause a false positive. The commenter asserted FSD should provide this opportunity both before testing occurs and after there is a positive test result. Individuals may initially be reluctant to disclose the use of medication that will disclose the existence of an underlying disability (e.g., mental health problem or seizure disorder), and more likely to want to disclose this information after testing positive for drugs. The commenter asserted to make it easier for the state to obtain such information on a voluntary basis, FSD should structure the screening so that eligibility specialists provide a very brief initial screening for substance abuse and, if suspicion is triggered, refer these individuals for a comprehensive substance abuse screening by trained substance abuse treatment specialists. The commenter noted that twelve (12) states refer individuals to a comprehensive screening assessment when suspicion is triggered by the initial screening.

RESPONSE: The screening tool does not require that any medical or medication information be revealed to FSD. Section 208.027.1, RSMo Supp. 2012, only requires the screening tool to be used to determine if there is reasonable cause to proceed with a drug test. The screening tool will not give a false positive for the illegal use of a controlled substance if someone is taking a prescribed or over-the-counter medication in accordance with a physician's instructions. No changes have been made to the rule as result of this comment.

COMMENT #3: Legal Services of Eastern Missouri, Inc. asserted in its comment to 13 CSR 40-2.410(1)(C) that FSD should clarify what will happen if an individual opts for drug rehabilitation in lieu of a drug test. The commenter claimed the rules do not outline what will happen if the individual chooses to complete a substance abuse treatment program but no appropriate programs are available. The commenter claimed this is a very real possibility given that the proposed rule limits the range of acceptable substance abuse treatment programs to those certified by DMH and contracted to provide Comprehensive Substance Abuse Treatment and Rehabilitation (CSTAR) services and the Department of Mental Health's (DMH) rules require a diagnosis of substance abuse or dependency in order to obtain substance abuse treatment through DMH. Additionally, the commenter claimed there may be no substance abuse treatment programs available due to insufficient funds or none available where the TA recipient resides. The commenter asserted the final rule should clarify that individuals opting for drug rehabilitation and treatment

are in compliance even if there is no program available for them at the time that they make this decision as long as they participate when such program becomes available.
RESPONSE: Section 208.027.1, RSMo Supp. 2012, allows individuals to request a referral to an appropriate substance abuse treatment program in lieu of a drug test. This is provided for in 13 CSR 40-2.410(1)(C). DMH has committed to providing priority assessment and admission to individuals referred to treatment under the authority of this rule. Section 208.027.1, RSMo Supp. 2012, provides that the recipient will continue to receive TA benefits while waiting for treatment if he or she is otherwise eligible. No changes have been made to the rule as a result of this comment.

COMMENT #4: Legal Services of Eastern Missouri, Inc. urged in its comment to 13 CSR 40-2.410(1)(C)1., that FSD should remove the provisions regarding disqualification of individuals from TA benefits for three (3) years for not participating in the screening process. The commenter asserted the legislation enabling the state to disqualify individuals from TA benefits was very specific in its grant of authority to FSD regarding disqualification of individuals from receiving TA benefits for three (3) years. Section 208.027.1, RSMo Supp. 2012, authorizes FSD to disqualify individuals applying for or receiving TA benefits for three (3) years after an administrative hearing only if the recipient has "tested positive for the use of a controlled substance, which was not prescribed for such recipient by a licensed health care provider" or who "refuses to submit to a test." The commenter asserted that FSD cannot go beyond this specific grant of authority by adding grounds not specified in the statute as a basis for a three- (3-) year termination of benefits. The provisions allowing FSD to disqualify individuals for noncooperation with the drug screening program are not allowed by the statute. The commenter asserted the final rules must limit the three- (3-) year TA disqualifications to only those two (2) circumstances specified by the statute.
RESPONSE AND EXPLANATION OF CHANGE: Disqualifying individuals from TA benefits for three (3) years for deliberately not participating in the screening process or the drug testing process is within the authority delegated to FSD by section 208.027.1, RSMo Supp. 2012. However, pursuant to comment #4, FSD, in order to be consistent with section 208.027.1, RSMo Supp. 2012, will change the proposed rule 13 CSR 40-2.410(1)(C)1., 13 CSR 40-2.420(2), 13 CSR 40-2.440(1)(A)1., 13 CSR 40-2.440(1)(A)2., 13 CSR 40-2.440(3)(E)2., and 13 CSR 40-2.440(3)(E)3. to remove the word "fails," "failed or," and "or fails" from the proposed rules. No other changes have been made to these rules as a result of this comment.

COMMENT #5: Missouri Catholic Conference Catholic Charities of Missouri, LLC asserted in a comment to 13 CSR 40-2.410(1)(C)1., that the proposed rule states that no benefits may be conferred upon those who "fail to cooperate" in the screening process. The rule does not address those who are unable to cooperate because of mental illness, literacy challenges, or other issues such as language barriers.
RESPONSE AND EXPLANATION OF CHANGE: FSD incorporates its response and explanation of change to comment #4 into this response and explanation of change as if the same was set out here.

COMMENT #6: Legal Services of Eastern Missouri, Inc., asserted in its comment to 13 CSR 40-2.410(1)(B)2. and 40-2.410(2)(B) that FSD should not allow a finding of "reasonable cause" based on prior "arrests" rather than convictions for drug offenses. The commenter asserted the United States Supreme Court has pronounced that drug tests are searches within the meaning of the Fourth Amendment and, therefore, there must be individualized suspicion before a drug test may be conducted by a public entity. Arrests, the commenter claimed, can be made under circumstances that are not reliable indicators of individualized suspicion (e.g., arresting an innocent person for unknowingly being in a vehicle where illegal substances are found). The commenter asserted that FSD should instead conduct the match only for convictions for drug offenses and allow for reasonable cause findings only when there are actual convictions.
RESPONSE: No changes have been made to this rule as a result of this comment.

COMMENT #7: The American Civil Liberties Union of Missouri and Kansas, in its comment to 13 CSR 40-2.410(2), asserted the rule requires TA recipients to "submit to a urine dipstick five- (5-) panel drug test if: A) The individual's response to the screening tool gives rise to reasonable cause the individual engages in the illegal use of a controlled substance; or B) An individual has an arrest or conviction for a misdemeanor or felony drug offense from the match with the Missouri Highway Patrol within the preceding twelve (12) months of the date of the match with the Missouri Highway Patrol."

The commenter noted that urine dipstick testing is a type of immunoassay drug testing. False-positive results constitute the main disadvantage to immunoassay drug tests. The commenter claimed that many commonly used and prescribed drugs can cause false-positive results in urine drug screens. "Results of immunoassays are always considered presumptive until confirmed by a laboratory-based test for the specific drug." "Gas chromatography followed by mass spectroscopy [GC/MS] is considered the 'gold standard' of urine toxicology because it is 99% specific and 99% sensitive."

The commenter asserted that due to the severe consequences for a positive drug test, it is essential that the division be certain that the result of the urine dipstick drug test is accurate. However, the commenter claimed the proposed rules utterly fail to provide for common protocols to ensure such accuracy. At a minimum, the commenter urged that the division's rules should—

- Establish procedures that will ensure the safe collection of the urine sample, the maintenance of the sample's physical integrity, and the security of the chain of custody of the sample;
- Establish requirements for training and certification of the employees conducting the urine dipstick testing;
- Require follow-up testing and confirmation of the initial immunoassay result by GC/MS testing;
- Require that the laboratories used by the division be on the United States Department of Health and Human Services (HHS) list of Laboratories and Instrumented Initial Testing Facilities (IITF) currently certified to meet the standards of the Mandatory Guidelines for Federal Workplace Drug Testing Programs; and
- Require that a Medical Review Officer (MRO) review the drug testing results and interview the recipient about the test result to determine whether there may be an innocent or legal explanation for the positive result.

RESPONSE AND EXPLANATION OF CHANGE: After considering the comment, FSD will make a change in 13 CSR 40-2.420 to set out the drug testing protocols. The changes will require that all urine samples collected under this program shall be collected and analyzed by a qualified contractor of the state of Missouri with laboratory facilities that comply with the standards of the National Institute on Drug Abuse/Substance Abuse and Mental Health Service Administration of the U.S. Department of Health and Human Services or other appropriate accrediting institution. The collection and analysis shall include the initial screening of the urine dipstick five- (5-) panel test and when necessary a confirmation test analyzed by a laboratory that complies with the standards of the Substance Abuse and Mental Health Service Administration of the U.S. Department of Health and Human Services. All samples confirmed by the laboratory as non-negative shall be interpreted as positive or negative by a Medical Review Officer. The laboratory must screen and test for the substances set forth in 13 CSR 40-2.400(16). No changes have been made to this rule as a result of this comment.

COMMENT #8: Legal Services of Eastern Missouri, Inc. asserted that 13 CSR 40-2.410(2)(A) does not indicate how an individual's responses to the screening tool will be used to make a finding of "reasonable cause" that the recipient "engages in illegal drug use."

The commenter asserted that the proposed rule may well leave recipients subject to the whims of the eligibility specialist. FSD should amend this rule to more clearly state what objective measures will trigger individualized suspicion. The commenter further recommended that the public be given an additional thirty- (30-) day period to comment on whether such objective measures are appropriate for determining "reasonable cause."
RESPONSE: The screening will be a standardized and objective tool. No changes have been made to the rule as a result of this comment.

COMMENT #9: Clinical Law Offices, Saint Louis University School of Law; Missouri Association of Social Welfare; and Queen of Peace Center asserted similar comments to 13 CSR 40-2.410(2)(A). They asserted that reasonable cause, as determined in various criminal cases before the United States Supreme Court, is likely a very different standard than, for example, that based on the subjective opinion of a case worker. Missouri Association of Social Welfare commented that screening based on a reasonable cause could lead to testing based on prejudices or unfair and unfounded causes. Queen of Peace Center asserted the rules are vague about the screening process and training that will be needed to implement the screening effectively. The rules state screening will be provided based upon reasonable cause. This subjective operational plan is arbitrary.

The regulation should provide an "affirmative defense" prior to hearing, so that a person with a mental health issue, or a person that is taking medication they know will lead to a positive test can show evidence of that without the need for testing and a hearing. It would seem this would save time and money for the state.
RESPONSE: The screening will be a standardized and objective tool. No changes have been made to the rule as a result of this comment.

COMMENT #10: Legal Services of Eastern Missouri, Inc; the American Civil Liberties Union of Missouri and Kansas; and the Missouri Catholic Conference Catholic Charities of Missouri, LLC asserted in their comment to 13 CSR 40-2.410(3) that FSD should not rely on the application for or receipt of TA benefits to impute consent on the part of TA recipients to obtain "all relevant information necessary to determine whether the individual engages in the illegal use of a controlled substance" by filling out and turning in an application. The commenters urged that this scheme is coercive and violates the Constitution. The comments can be broken down into two (2) subject areas.

1. The American Civil Liberties Union of Missouri and Kansas commented that the proposed rule will force recipients to agree to unconstitutional searches as a condition of their participation in the TA program. Individuals screened using the new assessment tool may well be subjected to arbitrary searches, as there is no indication what the tool will be or what standards will be employed to determine whether there is in fact a reasonable cause. The commenter claimed the U.S. Supreme Court has long held that the government may not restrict the exercise of a constitutional right in exchange for another right or discretionary benefit. The doctrine is based primarily on the notion that the government may not accomplish indirectly—here, forcing individuals to surrender their Fourth Amendment rights without good reason—what it cannot do directly. Therefore, the commenter claimed the entire regulatory scheme subjecting individuals to arbitrary and unreasonable searches in exchange for the receipt of TA benefits is unconstitutional.

2. Legal Services of Eastern Missouri, Inc; the American Civil Liberties Union of Missouri and Kansas; and the Missouri Catholic Conference Catholic Charities of Missouri, LLC claimed the proposed rule will subject TA recipients to violations of privacy, including medical privacy without their informed consent. The proposed rule presumes consent but fails to define "all relevant information." In order to protect medical privacy, the commenter urged that the division should prepare and use a specific form in which a recipient agrees to a specific release of specified medical information. The privacy rule, Health Insurance Portability and Accountability Act of 1996 (HIPAA), requires as much. Furthermore, if a recipient chooses to have a protective payee in place of testing, etc., there is no need for a broad authorization releasing "protected health information." The broad consent provision goes beyond the requirements of the legislation and fails to comply with other federal and state laws protecting medical privacy. To ensure that recipients are provided the opportunity to give informed consent, the application must be amended to ensure that the recipients know, up front, that they are consenting to the state receiving the potential adverse information. The commenter urged that a separate notice must be created to inform current TA recipients in plain language that receiving and using their next month's TA benefits will be deemed as consent to "obtain all relevant information necessary to determine whether the [recipient] engages in the illegal use of controlled substances."
RESPONSE AND EXPLANATION OF CHANGE: In light of this comment, FSD has deleted section (3) in the proposed rule 13 CSR 40-2.410. FSD will also delete language in 13 CSR 40-2.440(3)(E)4. This change is necessary to make the rules consistent in light of the change to 13 CSR 40-2.410(3). No other changes have been made to these rules as a result of this comment.

COMMENT #11: Catholic Charities Archdiocese of Saint Louis commented that 13 CSR 40-2.410 does not allow for any due process for recipients to challenge the results of screening. Nor is there any due process for performance of staff asked to determine who is to be sent for testing and denying benefits.
RESPONSE: Section 208.027.1, RSMo Supp. 2012, provides the required due process rights for TA recipients. Due process rights are provided for in 13 CSR 40-2.440. No changes have been made to the rule as a result of this comment.

COMMENT #12: Missouri Catholic Conference Catholic Charities of Missouri, LLC asserted that 13 CSR 40-2.410 should provide an "affirmative defense" prior to hearing, so that a person with a mental health issue, or a person that is taking medication they know will lead to a positive test can show evidence of that without the need for testing and a hearing. It would seem this would save time and money for the state. The commenter noted that at a hearing, a suspected drug user can assert an affirmative defense that they have a medical condition that prevents them from "submitting a sample for testing. . . or from completing an appropriate substance abuse treatment program."
RESPONSE: No changes have been made to the rule as a result of this comment.

COMMENT #13: Missouri Catholic Conference Catholic Charities of Missouri, LLC; Missouri Association of Social Welfare; The American Civil Liberties Union of Missouri and Kansas; Clinical Law Offices, Saint Louis University School of Law; Catholic Charities of Kansas City–St. Joseph Caritas Center; and Alice Kitchen, LSCSW, MPA made similar comments to section 208.027, RSMo Supp. 2012. The commenters asserted that the state of Missouri by passing this statute is making the presumption that indigent Missourians who apply for and receive temporary welfare benefits are more apt to use illicit drugs than are other recipients of state benefits. The comments believed that there is no evidence to support this presumption. Catholic Charities of Kansas City–St. Joseph Caritas Center and Alice Kitchen asserted the legislation was discriminatory because it targeted TA recipients because they get a state subsidy. Other individuals who get a state subsidy are not drug tested. Thus, singling out TA recipients and adding another layer of generalizations is not helpful. Clinical Law Offices, Saint Louis University School of Law asserted the proposed rules were not designed to achieve their purpose and requiring TA recipients to submit to drug testing will substantially harm these individuals by engulfing them in fear, anxiety, and a lack of trust. The comments assert that the available evidence shows that the rate of illicit drug use among recipients of TA benefits falls significantly below the rate of illicit drug use among other members of the population as a whole or

those other segments of population that receive other forms of government assistance. The American Civil Liberties Union of Missouri and Kansas cited to the case of *Lebron v. Wilkins*, 820 F. Supp.2d 1273, 1277 (M.D. Fla. 2011) as support noting that this case found that "drug use among the tested TA population was found to be significantly lower than drug use among welfare recipients in other national studies." Clinical Law Offices, Saint Louis University School of Law concluded the proposed rules constitute an attempt to target the poor of our communities is misguided. Catholic Charities of Kansas City–St. Joseph Caritas Center said that individuals living in poverty are already dealing with a number of stereotypes and generalizations that negatively impact their opportunities for success. Thus, singling out TA recipients and adding yet another layer of such generalization does not appear to be helpful. Further, the commenter said that if the state of Missouri genuinely wants to ensure that state dollars are not being used to support illegal drug use, then such a standard should be applied equally across all recipients of state dollars.
RESPONSE: This is a comment on the statute itself, and the policy of the statute is beyond the scope of the rulemaking procedure. No changes have been made to the rule as a result of this comment.

COMMENT #14: Missouri Catholic Conference Catholic Charities of Missouri, LLC asserted that many of the clients served by the commenter's organization struggle with physical and mental disabilities that prevent them from leading normal lives and make breaking the cycle of poverty even more challenging. The commenter said that adding another hurdle for them to receive temporary financial assistance is just one (1) more assault on their dignity as human beings.
RESPONSE: This is a comment on the statute itself, and the policy of the statute is beyond the scope of the rulemaking procedure. No changes have been made to the rule as a result of this comment.

COMMENT #15: Good Shepherd Children and Family Services asserted reliable income (i.e., an ability to provide for dependent children) is often a key factor in decisions to place children in foster care or to reunify families involved in the foster care system. The comment asserted that any rules that tend to impact individuals differentially by denying or redirecting TA benefits would also be expected to make it more likely that their children are taken into state custody and/or more likely that their children will remain in the state's custody longer. As such, the commenter believed the rules may have an unintended and negative social and fiscal impact in Missouri.
RESPONSE: This is a comment on the statute itself, and the policy of the statute is beyond the scope of the rulemaking procedure. No changes have been made to the rule as a result of this comment.

COMMENT #16: Alice Kitchen, LSCSW, MPA asserted that section 208.027, RSMo Supp. 2012, requires drug testing of those suspected of using controlled substances and not the more abused drugs, namely alcohol and prescription drugs.
RESPONSE: This is a comment on the statute itself, and the policy of the statute is beyond the scope of the rulemaking procedure. No changes have been made to the rule as a result of this comment.

COMMENT #17: Alice Kitchen, LSCSW, MPA and Catholic Charities of Kansas City–St. Joseph Caritas Center asserted that the requirement in section 208.027 RSMo Supp. 2012, for state staff to report TA recipients who test positive on a drug test or refuse to take a drug test to the Children's Division for suspected abuse or neglect raises several potential concerns. Alice Kitchen, LSCSW, MPA asserted the current definition does not include this as a reason to suspect child abuse or neglect. Ms. Kitchen asserted that Children's Division staff will be spending time on these reports that do not rise to the level of the state statute when more serious cases that need immediate attention could be delayed. Catholic Charities of Kansas City–St. Joseph Caritas Center asserted the number of children coming into foster care is increasing rapidly in some counties in Missouri, which has caused an overloaded child welfare system. Refusing a drug test is certainly not child abuse, and while child safety is profoundly important, drug use by a parent in and of itself is not child abuse either. Forcing more hotline calls in situations where there are no identified concerns of child abuse/neglect could very likely further burden Children's Division investigative units that are already experiencing high caseloads and call volumes. Catholic Charities of Kansas City–St. Joseph Caritas Center asserted foster care hotlines and cases cost the state a substantial amount of money to service; increasing that volume for situations that potentially only stem from a failed or refused drug test would seem to have the exact opposite fiscal impact than what was intended regarding drug testing for TA benefits.
RESPONSE: This is a comment on the statute itself, and the policy of the statute is beyond the scope of the rulemaking procedure. No changes have been made to the rule as a result of this comment.

COMMENT #18: Alice Kitchen, LSCSW, MPA and the Catholic Charities of Kansas City–St. Joseph Caritas Center asserted the cost to implement this legislation is not the best possible usage of public funding and does not meet the goals and objectives of TA. Alice Kitchen, LSCSW, MPA asserted the cost could be as high as $6.7 million to implement drug testing. She asserted the Missouri state budget already has a shortfall of $50 to $60 million not to include this expense.
RESPONSE: This is a comment on the statute itself, and the policy of the statute is beyond the scope of the rulemaking procedure. No changes have been made to the rule as a result of this comment.

COMMENT #19: Catholic Charities of Kansas City–St. Joseph Caritas Center asserted that placing drug testing requirements on TA benefits in such a manner increases the likelihood that an immediate need will not be met. The commenter said considering the majority of TA recipients are children, in many cases that unmet need will directly impact a child. The commenter said it has been shown in other states where similar rules have been introduced, it does not improve the state's budget situation, primarily because the infrastructure and processes needed for implementation of such procedures are substantial. The practice of drug testing as a requirement for state-funded assistance and support does not appear to be an effective measure when all things are considered, and it certainly is not fair or effective when the standard is only applied to the state's most vulnerable populations.
RESPONSE: This is a comment on the statute itself, and the policy of the statute is beyond the scope of the rulemaking procedure. No changes have been made to the rule as a result of this comment.

COMMENT #20: Catholic Charities Archdiocese of Saint Louis commented it noted a woeful lack of understanding for those who suffer from dual diagnosis of mental health and drug addiction. Funding for mental health and addiction treatment is being reduced. Recipients are denied assistance while waiting months to begin treatment. The commenter's organization recognizes that few people recover with one (1) attempt and addiction is often a lifelong condition. The commenter asked shall these people be denied the benefits that help them overcome their addiction?
RESPONSE: This is a comment on the statute itself, and the policy of the statute is beyond the scope of the rulemaking procedure. No changes have been made to the rule as a result of this comment.

COMMENT #21: Alice Kitchen, LSCSW, MPA commented that state workers in FSD already work with TA recipients around social obstacles such as mental illness, drug/alcohol abuse, and domestic violence to connect them with resources to alleviate problems and promote stability. This makes it evident that this legislation is misguided. And who has the most to lose? Vulnerable children caught between their parent's behavior and highly judgmental elected

officials. The commenter claimed that the only entities that stand to benefit are the drug testing companies. This is mean-spirited and an embarrassment to our citizens. This reminds me of the quote that says, "the justice of a society is not measured by how it treats its best but rather how it treats the most vulnerable among them."
RESPONSE: This is a comment on the statute itself, and the policy of the statute is beyond the scope of the rulemaking procedure. No changes have been made to the rule as a result of this comment.

13 CSR 40-2.410 Screening Temporary Assistance Applicants and Recipients for Illegal Use of a Controlled Substance

(1) The Family Support Division shall conduct a screening to determine illegal use of a controlled substance for all Temporary Assistance applicants and recipients who are age eighteen (18) or older, are the head-of-the-household, and are otherwise eligible for Temporary Assistance benefits as defined in 13 CSR 40-2.300 through 13 CSR 40-2.370.

(C) The individual may request referral to and then must successfully complete an appropriate substance abuse treatment program as set forth in 13 CSR 40-2.430 in lieu of a drug test as set forth in 13 CSR 40-2.420 at his/her request.

(D) The division shall not provide Temporary Assistance to or on behalf of an individual who refuses to cooperate with the screening process. The individual is ineligible for Temporary Assistance for a period of three (3) years from the date of the administrative hearing decision if the division is affirmed. The hearing process is set forth in 13 CSR 40-2.440.

Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 40—Family Support Division
Chapter 2—Income Maintenance

ORDER OF RULEMAKING

By the authority vested in the Department of Social Services, Family Support Division, under section 208.027, RSMo Supp. 2012, the division adopts a rule as follows:

13 CSR 40-2.420 is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on August 1, 2012 (37 MoReg 1154–1156). The sections with changes are reprinted here. This proposed rule becomes effective thirty (30) days after the publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The Family Support Division (FSD) received four (4) letters commenting on the proposed rule. Some of the comments were similar in nature. Therefore, due to the similarity in both the language and general subject matter of these comments, they have been grouped together.

COMMENT #1: Legal Services of Eastern Missouri, Inc. asserted that 13 CSR 40-2.420(1)(A) failed to provide the opportunity to appeal or seek reconsideration for individuals who are provided with a notice of reasonable cause determination. The failure to provide notice and an opportunity to be heard regarding a "reasonable cause" finding denies due process to affected individuals. The rules must be revised to provide notice and appeal rights regarding this determination. The commenter asserted while ideally the state should provide the standard ninety- (90-) day window for appealing an adverse decision (see, e.g. time frames for appealing adverse Medicaid or Food Stamp administrative decisions), there should, at minimum, be a time period of at least ten (10) days to appeal, or seek an expedited review or reconsideration of the state's determination of reasonable cause. FSD should therefore amend the rules accordingly.
RESPONSE: Section 208.027.1, RSMo Supp. 2012, provides the required due process rights for Temporary Assistance (TA) recipients. Due process rights are set out in 13 CSR 40-2.440. A positive drug screen and drug test will trigger an automatic appeal to a hearings officer and no decision to impose a sanction on the TA benefits will be made until after a hearing. No changes have been made as a result of this comment.

COMMENT #2: Missouri Catholic Conference Catholic Charities of Missouri, LLC asserted that 13 CSR 40-2.420(1)(C) provides that drug testing will be in the county of residence of the recipient. In larger counties, this could present a transportation problem. The commenter asked if transportation will be available for those who must submit to testing? If not, the rule should contain alternatives or an excuse from testing for those to whom this presents a barrier.
RESPONSE: No changes have been made to the rule as a result of this comment.

COMMENT #3: Missouri Catholic Conference Catholic Charities of Missouri, LLC asserted that 13 CSR 40-2.420(1)(D) requires verification of identity. The commenter asserted that many indigent clients do not have the forms of identification listed in the rules. The division should provide assistance with obtaining proper identification or provide alternative means of showing proof of identity to make this requirement attainable for those of limited means.
RESPONSE: No changes have been made to the rule as a result of this comment.

COMMENT #4: Legal Services of Eastern Missouri, Inc. asserted that 13 CSR 40-2.420(2) improperly goes beyond the statute and conflate a "refusal to cooperate" with a "failure to cooperate." The statute does not allow FSD to sanction individuals who merely fail to cooperate with the drug testing procedures. Rather, it only allows sanctions for individuals who test positive for illegal substances or refuse to submit to a drug test. Failure and refusal are simply not the same things. Moreover, given that the statute authorizes such a severe penalty—a three- (3-) year disqualification—it is clear why such penalties can only be based upon an actual refusal to submit to a drug test. The commenter asserted a three- (3-) year disqualification from an alleged failure to cooperate (e.g., from a missed appointment) is so severe that it clearly goes beyond what the statute authorizes.
RESPONSE AND EXPLANATION OF CHANGE: Disqualifying individuals from TA benefits for three (3) years for deliberately not cooperating with the drug screening or the drug testing process is within the authority granted in section 208.027, RSMo Supp. 2012. However, pursuant to comment #4, in order to be consistent with section 208.027.1, RSMo Supp. 2012, FSD will change 13 CSR 40-2.410(1)(C)1., 13 CSR 40-2.420(2), 13 CSR 40-2.440(1)(A)1., 13 CSR 40-2.440(1)(A)2., 13 CSR 40-2.440(3)(E)2., and 13 CSR 40-2.440(3)(E)3. to remove the word "fails," "failed or," and "or fails" from the proposed rules.

COMMENT #5: Legal Services of Eastern Missouri, Inc. and the Missouri Catholic Conference Catholic Charities of Missouri, LLC asserted in their comment to 13 CSR 40-2.420(2) that there are many circumstances that could cause an alleged "failure" to cooperate that do not justify a three- (3-) year sanction, such as lack of transportation, mental illness or other disabilities, lack of child care, conflicting schedules, lost mail resulting in lack of notice to the individual, and the lack of financial resources to obtain and pay for copies of medical records to provide to FSD "to confirm the result of drug testing." The unavailability of accessible treatment programs and the lack of transportation to drug testing or treatment programs is a particularly significant problem. The commenters asserted the unavailability of eligibility specialists given other work duties and limited access to eligibility specialists by phone can and will negatively affect an applicant or recipient's ability to communicate that he or she is unable to appear for a drug test for a good cause reason.

Therefore, the rules should be amended to delete provisions that authorize sanctions based on a "failure" to cooperate. The commenters asserted the rules should, at minimum, be amended to include "good cause" for any "failure" or "refusal" to cooperate where the applicant or recipient has been actively seeking, in good faith, to cooperate with the drug testing procedures, but is unable to do so (e.g., lack of transportation, mental illness or other disability, child care, etc) to ensure that individuals who cooperate in good faith are not improperly sanctioned since good faith cooperation is not the same thing as refusing to submit to a drug test.
RESPONSE AND EXPLANATION OF CHANGE: Section 208.027, RSMo Supp. 2012, does not provide for a "good cause" exception to the drug testing procedures. However, pursuant to comment #5, in order to be consistent with section 208.027.1, RSMo Supp. 2012, FSD will change 13 CSR 40-2.410(1)(C)1., 13 CSR 40-2.420(2), 13 CSR 40-2.440(1)(A)1., 13 CSR 40-2.440(1)(A)2., 13 CSR 40-2.440(3)(E)2., and 13 CSR 40-2.440(3)(E)3. to remove the word "fails," "failed or," and "or fails" from the proposed rules.

COMMENT #6: The American Civil Liberties Union of Missouri and Kansas asserted in a comment to 13 CSR 40-2.420(2) that the rule prohibits the division from providing TA benefits "to or on behalf of any individual who is required to submit to a drug test and who refuses or fails to contact or cooperate with any medical review process." The comment asserted that the rules should establish detailed procedures setting out the scope of the medical review process. The comment urged that the best practices for such a medical review process can be found in federal drug testing rules, such as those established by the U.S. Department of Transportation.
RESPONSE AND EXPLANATION OF CHANGE: After considering the comment, FSD will make a change in the rule to set forth drug testing protocols. All the drug testing administered under these proposed rules shall be conducted by a qualified contractor retained by the state of Missouri and subject to review by a medical review officer. See the response and explanation of change to comment #9.

COMMENT #7: Clinical Law Offices, Saint Louis University School of Law asserted in a comment to 13 CSR 40-2.420(4) that the department may require a drug test at least six (6) months from the date the recipient entered the substance abuse program. This is an unreasonable requirement because each individual is unique and may require different time frames to eliminate drugs from his or her system. Six (6) months is a very arbitrary time period and unfair to those individuals with severe drug problems who are doing what they can to address their illness. The commenter proposed FSD change the six- (6-) month standard to a standard that individuals may be tested upon successful completion of the substance abuse treatment program.
RESPONSE: Section 208.027, RSMo Supp. 2012, allows FSD to test the individual after six (6) months from the date the individual entered the substance abuse program. FSD believes the six- (6-) month period to be an appropriate period. No changes have been made to the rule as a result of this comment.

COMMENT #8: The American Civil Liberties Union of Missouri and Kansas asserted in a comment to 13 CSR 40-2.420(4) that the rule permits the division to require a urine dipstick five- (5-) panel drug test at six (6) months from the date the recipient entered the substance abuse treatment program, but it does not require the safeguards, including confirmation testing by GC/MS, referred to above. The commenter asserted that all of the drug testing done under the auspices of section 208.027, RSMo Supp. 2012, should include the safeguards referred to more fully above in the comments regarding 13 CSR 40-2.410—Screening Applicants for Illegal Drug Use.
RESPONSE AND EXPLANATION OF CHANGE: After considering the comment, FSD will make a change in the rule to set forth drug testing protocols. See the response and explanation of change to comment #9.

COMMENT #9: Clinical Law Offices, Saint Louis University School of Law asserted in a comment to 13 CSR 40-2.420 that drug testing cannot measure frequency of use, nor does it indicate the severity of impairment or whether an individual has a substance use disorder that requires treatment. The commenter claimed that without medical review and confirmation testing on initial positive results, urine screens also cannot distinguish between the illicit use of street drugs and the legitimate use of certain prescription and over-the-counter drugs. The commenter claimed that a drug test cannot distinguish between prescribed Tylenol with codeine and illicit opiates. Improper testing procedures and mishandling of samples can also produce inaccurate results. The commenter proposed to require medical review of all positive tests to strengthen accuracy of results and assurance of standardized testing. The commenter claimed that to administer these drug tests, the law is unclear as to what training these case workers must complete to be competent to conduct the tests. Besides the obvious training of how to properly administer a drug test and report the results, the commenter proposed to require these case workers to have some additional training in order to recognize when illegal drug activity is present. The proposed rules do not provide any language as to how this should be accomplished and the commenter believes it should be a requirement.
RESPONSE AND EXPLANATION OF CHANGE: After considering this comment, FSD will make a change in the rule to set forth drug testing protocols. All the drug testing administered under these proposed rules shall be conducted by a qualified contractor retained by the state of Missouri, which will include a medical review officer. FSD eligibility specialists and staff will not collect the testing specimens, or handle the drug testing procedures.

COMMENT #10: The Missouri Catholic Conference Catholic Charities of Missouri, LLC asserted in a comment to 13 CSR 40-2.420 that there is no mention in the testing rules about confirmation tests. Applicants and recipients claiming false positive test results should be able to request confirmation tests from the labs responsible for the test results to challenge presumptive "false positive" test results and the rule should include this provision.
RESPONSE AND EXPLANATION OF CHANGE: After considering the comment, FSD will make a change in the rule to permit the recipient the opportunity to request confirmation testing.

COMMENT #11: Legal Services of Eastern Missouri, Inc. asserted in a comment to 13 CSR 40-2.420 that the rule provides no time frame for conducting the drug testing or for complying with drug testing requirements. The commenter recommended that the rules be amended to include a time frame so that interested individuals and/or advocates can have the opportunity to comment on whether the state's time frames for drug testing are reasonable in light of the many issues that low-income Missourians will be contending with (e.g., lack of transportation, lack of child care, etc). An additional thirty- (30-) day comment period should also be provided on this issue as well.
RESPONSE: No changes have been made to the rule as a result of this comment.

COMMENT #12: Legal Services of Eastern Missouri, Inc., asserted in a comment to 13 CSR 40-2.420 that the TA applicants and recipients should have an opportunity to change their mind and cooperate with the drug testing process. The commenter recommended that the proposed rule should be amended to provide a grace period (e.g., ninety (90) days) to individuals who initially refuse to comply with a drug test to allow them the opportunity to avoid sanctions by cooperating with the drug testing process. The commenter recommended the rules should allow individuals the opportunity to gain their benefits back at any point during the three- (3-) year sanction period if they enter and complete a drug rehabilitation program during that time frame.
RESPONSE: Section 208.027, RSMo Supp. 2012, does not allow an

exception to the three- (3-) year disqualification period or a grace period as urged by the comment. No changes have been made to the rule as a result of this comment.

COMMENT #13: Missouri Catholic Conference Catholic Charities of Missouri, LLC; Missouri Association of Social Welfare; The American Civil Liberties Union of Missouri and Kansas; Clinical Law Offices, Saint Louis University School of Law; Catholic Charities of Kansas City–St. Joseph Caritas Center; and Alice Kitchen, LSCSW, MPA made similar comments to section 208.027, RSMo Supp. 2012. The commenters asserted that the state of Missouri, by passing this statute, is making the presumption that indigent Missourians who apply for and receive temporary welfare benefits are more apt to use illicit drugs than are other recipients of state benefits. The comments believed that there is no evidence to support this presumption. Catholic Charities of Kansas City–St. Joseph Caritas Center and Alice Kitchen asserted the legislation was discriminatory because it targeted TA recipients because they get a state subsidy. Other individuals who get a state subsidy are not drug tested. Thus, singling out TA recipients and adding another layer of generalizations is not helpful. Clinical Law Offices, Saint Louis University School of Law asserted the proposed rules were not designed to achieve their purpose and requiring TA recipients to submit to drug testing will substantially harm these individuals by engulfing them in fear, anxiety, and a lack of trust. The comments assert that the available evidence shows that the rate of illicit drug use among recipients of TA benefits falls significantly below the rate of illicit drug use among other members of the population as a whole, or those other segments of population that receive other forms of government assistance. The American Civil Liberties Union of Missouri and Kansas cited to the case of *Lebron v. Wilkins*, 820 F. Supp.2d 1273, 1277 (M.D. Fla. 2011) as support noting that this case found that "drug use among the tested TA population was found to be significantly lower than drug use among welfare recipients in other national studies." Clinical Law Offices, Saint Louis University School of Law concluded the proposed rules constitute an attempt to target the poor of our communities is misguided. Catholic Charities of Kansas City–St. Joseph Caritas Center said that individuals living in poverty are already dealing with a number of stereotypes and generalizations that negatively impact their opportunities at success. Thus, singling out TA recipients and adding yet another layer of such generalization does not appear to be helpful. Further, the commenter said that if the state of Missouri genuinely wants to ensure that state dollars are not being used to support illegal drug use, then such a standard should be applied equally across all recipients of state dollars.
RESPONSE: This is a comment on the statute itself, and the policy of the statute is beyond the scope of the rulemaking procedure. No changes have been made to the rule as a result of this comment.

COMMENT #14: Missouri Catholic Conference Catholic Charities of Missouri, LLC asserted that many of the clients served by the commenter's organization struggle with physical and mental disabilities that prevent them from leading normal lives and make breaking the cycle of poverty even more challenging. The commenter said that adding another hurdle for them to receive temporary financial assistance is just one (1) more assault on their dignity as human beings.
RESPONSE: This is a comment on the statute itself, and the policy of the statute is beyond the scope of the rulemaking procedure. No changes have been made to the rule as a result of this comment.

COMMENT #15: Good Shepherd Children and Family Services asserted reliable income (i.e., an ability to provide for dependent children) is often a key factor in decisions to place children in foster care, or to reunify families involved in the foster care system. The comment asserted that any rules that tend to impact individuals differentially by denying or redirecting TA benefits would also be expected to make it more likely that their children are taken into state custody and/or more likely that their children will remain in the state's custody longer. As such, the commenter believed the rules may have an unintended and negative social and fiscal impact in Missouri.
RESPONSE: This is a comment on the statute itself, and the policy of the statute is beyond the scope of the rulemaking procedure. No changes have been made to the rule as a result of this comment.

COMMENT #16: Alice Kitchen, LSCSW, MPA asserted that section 208.027, RSMo Supp. 2012, requires drug testing of those suspected of using controlled substances and not the more abused drugs, namely alcohol and prescription drugs.
RESPONSE: This is a comment on the statute itself, and the policy of the statute is beyond the scope of the rulemaking procedure. No changes have been made to the rule as a result of this comment.

COMMENT #17: Alice Kitchen, LSCSW, MPA and Catholic Charities of Kansas City–St. Joseph Caritas Center asserted that the requirement in section 208.027, RSMo Supp. 2012, for state staff to report TA recipients who test positive on a drug test or refuse to take a drug test to the Children's Division for suspected abuse or neglect raises several potential concerns. Alice Kitchen, LSCSW, MPA asserted the current definition does not include this as a reason to suspect child abuse or neglect. Ms. Kitchen asserted that Children's Division staff will be spending time on these reports that do not rise to the level of the state statute when more serious cases that need immediate attention could be delayed. Catholic Charities of Kansas City–St. Joseph Caritas Center asserted the number of children coming into foster care is increasing rapidly in some counties in Missouri, which has caused an overloaded child welfare system. Refusing a drug test is certainly not child abuse, and while child safety is profoundly important, drug use by a parent in and of itself is not child abuse either. Forcing more hotline calls in situations where there are no identified concerns of child abuse/neglect could very likely further burden Children's Division investigative units that are already experiencing high caseloads and call volumes. Catholic Charities of Kansas City–St. Joseph Caritas Center asserted foster care hotlines and cases cost the state a substantial amount of money to service; increasing that volume for situations that potentially only stem from a failed or refused drug test would seem to have the exact opposite fiscal impact than what was intended regarding drug testing for TA benefits.
RESPONSE: This is a comment on the statute itself, and the policy of the statute is beyond the scope of the rulemaking procedure. No changes have been made to the rule as a result of this comment.

COMMENT #18: Alice Kitchen, LSCSW, MPA and the Catholic Charities of Kansas City–St. Joseph Caritas Center asserted the cost to implement this legislation is not the best possible usage of public funding and does not meet the goals and objectives of TA. Alice Kitchen, LSCSW, MPA asserted the cost could be as high as $6.7 million to implement drug testing. She asserted the Missouri state budget already has a shortfall of $50 to $60 million not to include this expense.
RESPONSE: This is a comment on the statute itself, and the policy of the statute is beyond the scope of the rulemaking procedure. No changes have been made to the rule as a result of this comment.

COMMENT #19: Catholic Charities of Kansas City–St. Joseph Caritas Center asserted that placing drug testing requirements on TA benefits in such a manner increases the likelihood that an immediate need will not be met. The commenter said considering the majority of TA recipients are children, in many cases that unmet need will directly impact a child. The commenter said it has been shown in other states where similar rules have been introduced, it does not improve the state's budget situation, primarily because the infrastructure and processes needed for implementation of such procedures are substantial. The practice of drug testing as a requirement for state funded assistance and support does not appear to be an

effective measure when all things are considered, and it certainly is not fair or effective when the standard is only applied to the state's most vulnerable populations.
RESPONSE: This is a comment on the statute itself, and the policy of the statute is beyond the scope of the rulemaking procedure. No changes have been made to the rule as a result of this comment.

COMMENT #20: Catholic Charities Archdiocese of Saint Louis commented it noted a woeful lack of understanding for those who suffer from dual diagnosis of mental health and drug addiction. Funding for mental health and addiction treatment is being reduced. Recipients are denied assistance while waiting months to begin treatment. The commenter's organization recognizes that few people recover with one (1) attempt and addiction is often a lifelong condition. The commenter said shall these people be denied the benefits that help them overcome their addiction?
RESPONSE: This is a comment on the statute itself, and the policy of the statute is beyond the scope of the rulemaking procedure. No changes have been made to the rule as a result of this comment.

COMMENT #21: Alice Kitchen, LSCSW, MPA commented that state workers in FSD already work with TA recipients around social obstacles such as mental illness, drug/alcohol abuse, and domestic violence to connect them with resources to alleviate problems and promote stability. This makes it evident that this legislation is misguided. And who has the most to lose? Vulnerable children caught between their parent's behavior and highly judgmental elected officials. The commenter claimed that the only entities that stand to benefit are the drug testing companies. This is mean-spirited and an embarrassment to our citizens. This reminds me of the quote that says, "the justice of a society is not measured by how it treats its best but rather how it treats the most vulnerable among them."
RESPONSE: This is a comment on the statute itself, and the policy of the statute is beyond the scope of the rulemaking procedure. No changes have been made to the rule as a result of this comment.

13 CSR 40-2.420 Testing for the Illegal Use of a Controlled Substance by Applicants and Recipients of Temporary Assistance

(2) Drug Testing Protocols.

(A) All urine samples collected under this program shall be collected and analyzed by a qualified contractor of the state of Missouri with laboratory facilities that comply with the standards of the National Institute on Drug Abuse/Substance Abuse and Mental Health Service Administration of the U.S. Department of Health and Human Services or other appropriate accrediting institution. The collection and analysis shall include the initial screening of the urine dipstick five- (5-) panel test and when necessary a confirmation test analyzed by a laboratory that complies with the standards of the Substance Abuse and Mental Health Service Administration of the U.S. Department of Health and Human Services. All samples confirmed by the laboratory as non-negative shall be interpreted as positive or negative by a medical review officer licensed by the American Association of Medical Review Officers, American College of Occupational and Environmental Medicine, Medical Review Officer Certification Council, or American Society of Addiction Medicine.

(B) The laboratory must screen and test for the substances set forth in 13 CSR 40-2.400(16). Said testing must screen, at a minimum, for the levels of such substances as provided by 1 CSR 30-7.010(5), as may be amended from time-to-time.

(3) The division shall not provide Temporary Assistance to or on behalf of an individual who is required to submit to a drug test and who refuses to cooperate with any part of the drug testing process.

(A) Refusal to cooperate shall include:

1. Failure to provide a sample for drug testing within the required time frame;

2. Failure to fully comply with the drug testing process as directed by the Family Support Division or its designee;

3. Failure to appear for drug testing at the designated location and time;

4. Failure to contact or cooperate with any medical review process;

5. Failure to provide verification of identity; and

6. Failure to complete any documents or consent forms required by the Family Support Division or its designee, the drug testing provider, the Department of Mental Health, or the substance abuse treatment provider.

(B) The individual is ineligible for Temporary Assistance for a period of three (3) years from the date of the administrative hearing decision if the division is affirmed. The hearing process is set forth in 13 CSR 40-2.440.

(4) The division shall not provide Temporary Assistance to or on behalf of an individual who tests positive for illegal use of a controlled substance and fails to enter, participate, and successfully complete an appropriate substance abuse treatment program as set forth in 13 CSR 40-2.430. The individual is ineligible for Temporary Assistance for a period of three (3) years from the date of the administrative hearing decision if the division is affirmed. The hearing process is set forth in 13 CSR 40-2.440.

(5) An individual subject to drug testing who has a positive drug result may at his or her expense have the positive drug test result confirmed. The individual must make this request for testing within ten (10) days from notification of the positive test result.

(6) The division may require a urine dipstick five- (5-) panel drug test at six (6) months from the date the recipient entered the substance abuse treatment program as defined in 13 CSR 40-2.430. If the individual tests positive, the individual is ineligible for Temporary Assistance for a period of three (3) years from the date of the administrative hearing decision if the division is affirmed. The hearing process is set forth in 13 CSR 40-2.440.

(7) The amount of assistance that would otherwise be required to be provided under the Temporary Assistance Program to the family members of an individual to whom sections (3), (4), and (6) apply shall be reduced by the amount which would have otherwise been made available to the individual who has been declared ineligible.

(8) The division shall add an otherwise eligible individual who has been declared ineligible for Temporary Assistance as set forth in 13 CSR 40-2.400 through 13 CSR 40-2.430 to the Temporary Assistance household after the three- (3-) year period of ineligibility has elapsed. The individual is subject to the rules as set forth in 13 CSR 40-2.400 through 13 CSR 40-2.450.

Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 40—Family Support Division
Chapter 2—Income Maintenance

ORDER OF RULEMAKING

By the authority vested in the Department of Social Services, Family Support Division, under section 208.027, RSMo Supp. 2012, the division adopts a rule as follows:

13 CSR 40-2.430 Substance Abuse Treatment Program for Temporary Assistance Recipients **is adopted**.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on August 1, 2012 (37 MoReg 1157–1158). No changes have been made to the text of the

proposed rule, so it is not reprinted here. This proposed rule becomes effective thirty (30) days after the publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The Family Support Division (FSD) received five (5) letters commenting on the proposed rule. Some of the comments were similar in nature. Therefore, due to the similarity in both the language and general subject matter of these comments, they have been grouped together.

COMMENT #1: Good Shepherd Children and Family Services; Clinical Law Offices, Saint Louis University School of Law; and Queen of Peace Center asserted that 13 CSR 40-2.430 has an extraordinarily narrow definition of approved treatment that will almost certainly overtax a system that is already stretched to the limit. The rules state that an appropriate substance abuse treatment program is one that is certified by the Department of Mental Health (DMH) and contracted to provide Comprehensive Substance Abuse Treatment and Rehabilitation (CSTAR) services. The commenters asserted that DMH's own data makes it clear that thousands of Missouri citizens are already on waiting lists for Division of Alcohol and Drug treatment. The commenters claimed the proposed rules would appear only to compound this problem, putting more individuals on waiting lists and undermining other potentially useful treatment efforts. Moreover, the proposed rules do not identify clearly the implications of waiting list placement or a decision by a prospective Temporary Assistance (TA) recipient to reconsider treatment after a decision has already been made to deny or redirect TA benefits (e.g., an appeal). A narrowly defined substance abuse treatment definition undermines the many pathways to recovery and abstinence that are proven to be successful. The commenters also asserted that to the extent that such narrow definitions of approved treatment result in parents and extended family members losing TA benefits, it can be expected that the proposed rules will also have the unintended impact of serving as a barrier to efforts to prevent children from being placed in foster care or to reunify families already involved in the foster care system. The commenters asserted that the social and fiscal impacts of such a trend are not adequately anticipated or addressed in the proposed rules.
RESPONSE: DMH will provide priority assessment and admission to individuals referred to treatment under the authority of this rule. No changes have been made to the rule as a result of this comment.

COMMENT #2: The Missouri Catholic Conference Catholic Charities of Missouri, LLC and the Missouri Association of Social Welfare asserted in a comment to 13 CSR 40-2.430(1) that referral to "appropriate substance abuse treatment" excludes non-CSTAR programs that could provide treatment if this definition were expanded.
RESPONSE: FSD incorporates here its response to comment #1. No changes have been made to the rule as a result of this comment.

COMMENT #3: Missouri Association of Social Welfare asserted in a comment to 13 CSR 40-2.430(3) that the rule should reflect that those referred for treatment, but not able to enroll because of lack of available spots, be considered "actively participating" and be able to receive benefits while they wait to enroll.
RESPONSE: Section 208.027, RSMo Supp. 2012, is clear that a recipient will not be declared ineligible for TA benefits if he or she is on a waiting list for treatment. DMH will provide priority assessment and admission to individuals referred to treatment under the authority of this rule. No changes have been made to the rule as a result of this comment.

COMMENT #4: The Missouri Catholic Conference Catholic Charities of Missouri, LLC and Legal Services of Eastern Missouri, Inc. commented on 13 CSR 40-2.430(3). (Legal Services of Eastern Missouri, Inc. mislabeled this comment as one directed to 13 CSR 40-2.230(3). It is assumed this comment was directed at 13 CSR 40-2.430(3).) The commenters asserted that the proposed rule provides that an individual can demonstrate "active participation" by completing a comprehensive assessment; enrolling in an appropriate substance abuse treatment program; consenting to communication between the treatment provider, FSD, and DMH about their participation and progress; participating in the development of an individualized treatment plan; and making satisfactory progress towards the treatment goals. The commenters asserted that the rules do not spell out what will happen to individuals who do not qualify (pursuant to DMH rules) for substance abuse treatment or who do not have an available treatment program. The commenter asserted that the proposed rules do not account for individuals who are referred to a substance abuse treatment program but are placed on a waiting list. As noted earlier, there is simply insufficient capacity in the state for all individuals who need a drug treatment program.

Legal Services of Eastern Missouri, Inc. recommends, therefore, that the rules be amended to make it clear that "active participation" also includes individuals who are attempting to make progress towards these objectives but are not able to through no fault of their own. The proposed rules also do not include any exceptions from participation for individuals who cannot find substance abuse treatment that is accessible to them because of their disabilities. The final rules should provide exceptions from sanctions for individuals with disabilities who wish to undergo treatment but for whom no accessible or appropriate facility is available. The commenter asserted that the rules also do not explain what happens if an individual opts to complete a substance abuse treatment program but the program will not accept the individual. For example, the commenter noted, if the individual is merely an occasional "drug user" and not considered to be addicted to a drug, substance abuse programs may not accept the individual, reasoning that their time and resources are better spent on individuals who are having trouble combating illegal drug use. The commenter asked will the state exempt the individual from having to undergo a drug rehabilitation program to keep his or her TA benefits or will the state sanction the individual anyway? In light of the extremely punitive sanctions under the rules, FSD should provide these individuals with some leeway because they are, in good faith, opting for drug rehabilitation but programs will not accept them. The commenter asserted that they should not be sanctioned when they are cooperating with the drug testing program in good faith but are not able to participate in a treatment program through no fault of their own. Thus, commenter claimed either the state should create a "good cause" exemption for them or find that they comply with the "active participation" requirement as long as they are doing all that is asked of them.
RESPONSE: Section 208.027, RSMo Supp. 2012, is clear that a recipient will not be declared ineligible for TA benefits if he or she is on a waiting list for treatment. DMH will provide priority assessment and admission to individuals referred to treatment under the authority of this rule. All DMH certified and contracted CSTAR programs must adhere to DMH certification requirements included in 9 CSR 10-7.010, Treatment Principles and Outcomes, which stipulate that services must be: A) adapted to the needs of different populations served; and B) understood and practiced by staff in providing services and supports. Services must be delivered in a manner that is responsive to each individual's age, cultural background, gender, language and communication skills, and other factors, as indicated. Services and supports must be individualized in accordance with the needs and situation of each individual served.

Finally, the commenter suggests that FSD create a good cause exception for those individuals opting for drug rehabilitation, but the programs will not accept them through no fault of their own. Section 208.027, RSMo Supp. 2012, does not allow such a good cause exception for TA recipients as urged by the commenter. Section 208.027, RSMo Supp. 2012, sets forth the prescribed course the individual TA recipient must follow to obtain diagnosis and treatment. No changes have been made to the rule as a result of this comment.

COMMENT #5: Missouri Catholic Conference Catholic Charities

of Missouri, LLC; Missouri Association of Social Welfare; The American Civil Liberties Union of Missouri and Kansas; Clinical Law Offices, Saint Louis University School of Law; Catholic Charities of Kansas City–St. Joseph Caritas Center and Alice Kitchen, LSCSW, MPA made similar comments to section 208.027, RSMo Supp. 2012. The commenters asserted that the state of Missouri, by passing this statute is making the presumption that indigent Missourians who apply for and receive temporary welfare benefits are more apt to use illicit drugs than are other recipients of state benefits. The commenters believed that there is no evidence to support this presumption. Catholic Charities of Kansas City–St. Joseph Caritas Center and Alice Kitchen asserted the legislation was discriminatory because it targeted TA recipients because they get a state subsidy. Other individuals who get a state subsidy are not drug tested. Thus, singling out TA recipients and adding another layer of generalizations is not helpful. Clinical Law Offices, Saint Louis University School of Law asserted the proposed rules were not designed to achieve their purpose and requiring TA recipients to submit to drug testing will substantially harm these individuals by engulfing them in fear, anxiety, and a lack of trust. The comments assert that the available evidence shows that the rate of illicit drug use among recipients of TA benefits falls significantly below the rate of illicit drug use among other members of the population as a whole, or those other segments of population that receive other forms of government assistance. The American Civil Liberties Union of Missouri and Kansas cited to the case of *Lebron v. Wilkins*, 820 F. Supp.2d 1273, 1277 (M.D. Fla. 2011) as support noting that this case found that "drug use among the tested TA population was found to be significantly lower than drug use among welfare recipients in other national studies." Clinical Law Offices, Saint Louis University School of Law concluded the proposed rules constitute an attempt to target the poor of our communities is misguided. Catholic Charities of Kansas City–St. Joseph Caritas Center said that individuals living in poverty are already dealing with a number of stereotypes and generalizations that negatively impact their opportunities at success. Thus, singling out TA recipients and adding yet another layer of such generalization does not appear to be helpful. Further, the commenter said that if the state of Missouri genuinely wants to ensure that state dollars are not being used to support illegal drug use, then such a standard should be applied equally across all recipients of state dollars.

RESPONSE: This is a comment on the statute itself, and the policy of the statute is beyond the scope of the rulemaking procedure. No changes have been made to the rule as a result of this comment.

COMMENT #6: Missouri Catholic Conference Catholic Charities of Missouri, LLC asserted that many of the clients served by the commenter's organization struggle with physical and mental disabilities that prevent them from leading normal lives and make breaking the cycle of poverty even more challenging. The commenter said that adding another hurdle for them to receive temporary financial assistance is just one (1) more assault on their dignity as human beings.

RESPONSE: This is a comment on the statute itself, and the policy of the statute is beyond the scope of the rulemaking procedure. No changes have been made to the rule as a result of this comment.

COMMENT #7: Good Shepherd Children and Family Services asserted reliable income (i.e., an ability to provide for dependent children) is often a key factor in decisions to place children in foster care, or to reunify families involved in the foster care system. The comment asserted that any rules that tend to impact individuals differentially by denying or redirecting TA benefits would also be expected to make it more likely that their children are taken into state custody and/or more likely that their children will remain in the state's custody longer. As such, the commenter believed the rules may have an unintended and negative social and fiscal impact in Missouri.

RESPONSE: This is a comment on the statute itself, and the policy of the statute is beyond the scope of the rulemaking procedure. No changes have been made to the rule as a result of this comment.

COMMENT #8: Alice Kitchen, LSCSW, MPA asserted that section 208.027, RSMo Supp. 2012, requires drug testing of those suspected of using controlled substances and not the more abused drugs, namely alcohol and prescription drugs.

RESPONSE: This is a comment on the statute itself, and the policy of the statute is beyond the scope of the rulemaking procedure. No changes have been made to the rule as a result of this comment.

COMMENT #9: Alice Kitchen, LSCSW, MPA and Catholic Charities of Kansas City–St. Joseph Caritas Center asserted that the requirement in section 208.027, RSMo Supp. 2012, for state staff to report TA recipients who test positive on a drug test or refuse to take a drug test to the Children's Division for suspected abuse or neglect raises several potential concerns. Alice Kitchen, LSCSW, MPA asserted the current definition does not include this as a reason to suspect child abuse or neglect. Ms. Kitchen asserted that Children's Division staff will be spending time on these reports that do not rise to the level of the state statute when more serious cases that need immediate attention could be delayed. Catholic Charities of Kansas City–St. Joseph Caritas Center asserted the number of children coming into foster care is increasing rapidly in some counties in Missouri, which has caused an overloaded child welfare system. Refusing a drug test is certainly not child abuse, and while child safety is profoundly important, drug use by a parent in and of itself is not child abuse either. Forcing more hotline calls in situations where there are no identified concerns of child abuse/neglect could very likely further burden Children's Division investigative units that are already experiencing high caseloads and call volumes. Catholic Charities of Kansas City–St. Joseph Caritas Center asserted foster care hotlines and cases cost the state a substantial amount of money to service; increasing that volume for situations that potentially only stem from a failed or refused drug test would seem to have the exact opposite fiscal impact than what was intended regarding drug testing for TA benefits.

RESPONSE: This is a comment on the statute itself, and the policy of the statute is beyond the scope of the rulemaking procedure. No changes have been made to the rule as a result of this comment.

COMMENT #10: Alice Kitchen, LSCSW, MPA and the Catholic Charities of Kansas City–St. Joseph Caritas Center asserted the cost to implement this legislation is not the best possible usage of public funding and does not meet the goals and objectives of TA. Alice Kitchen, LSCSW, MPA asserted the cost could be as high as $6.7 million to implement drug testing. She asserted the Missouri state budget already has a shortfall of $50 to $60 million not to include this expense.

RESPONSE: This is a comment on the statute itself, and the policy of the statute is beyond the scope of the rulemaking procedure. No changes have been made to the rule as a result of this comment.

COMMENT #11: Catholic Charities of Kansas City–St. Joseph Caritas Center asserted that placing drug testing requirements on TA benefits in such a manner increases the likelihood that an immediate need will not be met. The commenter said considering the majority of TA recipients are children, in many cases that unmet need will directly impact a child. The commenter said it has been shown in other states where similar rules have been introduced, it does not improve the state's budget situation, primarily because the infrastructure and processes needed for implementation of such procedures are substantial. The practice of drug testing as a requirement for state funded assistance and support does not appear to be an effective measure when all things are considered, and it certainly is not fair or effective when the standard is only applied to the state's most vulnerable populations.

RESPONSE: This is a comment on the statute itself, and the policy

of the statute is beyond the scope of the rulemaking procedure. No changes have been made to the rule as a result of this comment.

COMMENT #12: Catholic Charities Archdiocese of Saint Louis commented it noted a woeful lack of understanding for those who suffer from dual diagnosis of mental health and drug addiction. Funding for mental health and addiction treatment is being reduced. Recipients are denied assistance while waiting months to begin treatment. The commenter's organization recognizes that few people recover with one (1) attempt and addiction is often a lifelong condition. The commenter said shall these people be denied the benefits that help them overcome their addiction?
RESPONSE: This is a comment on the statute itself, and the policy of the statute is beyond the scope of the rulemaking procedure. No changes have been made to the rule as a result of this comment.

COMMENT #13: Alice Kitchen, LSCSW, MPA commented that state workers in FSD already work with TA recipients around social obstacles such as mental illness, drug/alcohol abuse, and domestic violence to connect them with resources to alleviate problems and promote stability. This makes it evident that this legislation is misguided. And who has the most to lose? Vulnerable children caught between their parent's behavior and highly judgmental elected officials. The commenter claimed that the only entities that stand to benefit are the drug testing companies. This is mean-spirited and an embarrassment to our citizens. This reminds me of the quote that says, "the justice of a society is not measured by how it treats its best but rather how it treats the most vulnerable among them."
RESPONSE: This is a comment on the statute itself, and the policy of the statute is beyond the scope of the rulemaking procedure. No changes have been made to the rule as a result of this comment.

Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 40—Family Support Division
Chapter 2—Income Maintenance

ORDER OF RULEMAKING

By the authority vested in the Department of Social Services, Family Support Division, under section 208.027, RSMo Supp. 2012, the division adopts a rule as follows:

13 CSR 40-2.440 is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on August 1, 2012 (37 MoReg 1159–1162). The sections with changes are reprinted here. This proposed rule becomes effective thirty (30) days after the publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The Family Support Division (FSD) received two (2) letters commenting on the proposed rule. All of the comments were similar in nature. Therefore, due to the similarity in both the language and general subject matter, they have been grouped together.

COMMENT #1: Legal Services of Eastern Missouri, Inc. asserted that 13 CSR 40-2.440(3)(F) and (3)(G) do not give individuals a meaningful opportunity to cross-examine the individuals who conducted the drug test nor does it require medical experts to testify on the state's behalf. Due process requires the state to provide that affected individual the opportunity to cross-examine adverse witnesses. *Goldberg v. Kelly*, 397 U.S. 254, 269 (1970) ("In almost every setting where important decisions turn on questions of fact, due process requires an opportunity to confront and cross-examine adverse witnesses"). The commenters asserted that the rules fail to provide the affected individual the opportunity to cross-examine the person conducting the drug test regarding errors in the handling and processing of the drug test. Nor do they require that medical experts testify on the state's behalf. The commenters asserted that the fiscal note for House Bill 73 specifically states that experts in toxicology and medicine are routinely used in these hearings to testify to the accuracy of tests and results, thereby assuming that such experts would be called to support any findings of illegal drug use. The commenters asserted that the rules circumvent legislative intent and deny this critically important protection by allowing such evidence to be admitted without a proper foundation. The rules would make any drug test result admissible as evidence of a violation of the drug testing rule without an opportunity for cross examination, and would improperly shift the burden of proof to the Temporary Assistance (TA) claimant to prove that the test was administered improperly. The commenters asserted that given that there will certainly be "false positives" from the mandatory drug testing and the severe consequences of a positive drug test, the rules should be amended to require FSD to have the individual who conducted the drug test testify at the hearing and to produce medical experts to testify regarding the drug testing process. The commenters asserted that the rules should be revised to provide individuals with the right to an independent test of the sample as well as the right to question the lab technician maintaining the equipment used for testing concerning maintenance of the equipment, calibration, and any other relevant issues.

RESPONSE: No changes have been made to the rule as a result of this comment.

COMMENT #2: The Missouri Catholic Conference Catholic Charities of Missouri, LLC and Legal Services of Eastern Missouri, Inc. asserted that the affirmative defenses in 13 CSR 40-2.440(3)(F) are too narrow and would exclude possible causes of a positive test result. The commenters asserted that paragraph (3)(F)1. allows an individual to demonstrate that a prescribed drug caused a positive drug test but not that a medical condition caused a "false positive." For example, an individual who has kidney disease could test positive for an illegal substance such as cocaine but that circumstance is not covered by paragraphs (3)(F)1. or (3)(F)2. A medical or mental health condition may only be used as a basis for not submitting a sample or failing to complete drug treatment under paragraph (3)(F)2.—not for explaining a positive test result. The commenters asserted that affirmative defenses should be broadened to allow individuals to rebut a positive test result with evidence of a medical condition or mental illness that could cause such an outcome. The rule also limits affirmative defenses to positive test results to prescribed medications, even though over the counter medications such as Tylenol can cause a "false positive" on a drug test. The commenter asserted that FSD should broaden the affirmative defenses to include circumstances in which a legal substance, whether prescribed or not, could potentially cause a false positive to be triggered. Moreover, as noted earlier, the commenter asserted that FSD needs to screen individuals for medical conditions and medications that give rise to false positives at the outset, not place the burden on a disabled individual to request a hearing, and then prove at the hearing that such a medical condition exists.

RESPONSE: No changes have been made to the rule as a result of this comment.

COMMENT #3: The Missouri Catholic Conference Catholic Charities of Missouri, LLC and the Legal Services of Eastern Missouri, Inc. asserted that 13 CSR 40-2.440(3)(G) indicate that any medical record in the possession of FSD will be admissible without any authentication. These documents would normally be considered hearsay and are difficult to defend against. The commenters asserted that the rules should be amended to require that these records should at least be authenticated by affidavit. FSD should provide to the accused copies of any documents to be introduced into evidence at a hearing at least seven (7)

days prior to the hearing as required by section 490.692.2, RSMo 2000, to provide due process and basic fairness.
RESPONSE: It is unnecessary to set out such a requirement in these rules because a procedure for the prior disclosure of evidence is already set out in law. See sections 490.692, RSMo 2000, and 536.070(12), RSMo Supp. 2012. No changes have been made to the rule as a result of this comment.

COMMENT #4: Missouri Catholic Conference Catholic Charities of Missouri, LLC; Missouri Association of Social Welfare; The American Civil Liberties Union of Missouri and Kansas; Clinical Law Offices, Saint Louis University School of Law; Catholic Charities of Kansas City–St. Joseph Caritas Center, and Alice Kitchen, LSCSW, MPA made similar comments to section 208.027, RSMo Supp. 2012. The commenters asserted that the state of Missouri by passing this statute is making the presumption that indigent Missourians who apply for and receive temporary welfare benefits are more apt to use illicit drugs than are other recipients of state benefits. The commenters believed that there is no evidence to support this presumption. Catholic Charities of Kansas City–St. Joseph Caritas Center and Alice Kitchen asserted the legislation was discriminatory because it targeted TA recipients because they get a state subsidy. Other individuals who get a state subsidy are not drug tested. Thus, singling out TA recipients and adding another layer of generalizations is not helpful. Clinical Law Offices, Saint Louis University School of Law asserted the proposed rules were not designed to achieve their purpose and requiring TA recipients to submit to drug testing will substantially harm these individuals by engulfing them in fear, anxiety, and a lack of trust. The comments assert that the available evidence shows that the rate of illicit drug use among recipients of TA benefits falls significantly below the rate of illicit drug use among other members of the population as a whole, or those other segments of population that receive other forms of government assistance. The American Civil Liberties Union of Missouri and Kansas cited to the case of *Lebron v. Wilkins*, 820 F. Supp.2d 1273, 1277 (M.D. Fla. 2011) as support noting that this case found that "drug use among the tested TA population was found to be significantly lower than drug use among welfare recipients in other national studies." Clinical Law Offices, Saint Louis University School of Law concluded the proposed rules constitutes an attempt to target the poor of our communities is misguided. Catholic Charities of Kansas City–St. Joseph Caritas Center said that individuals living in poverty are already dealing with a number of stereotypes and generalizations that negatively impact their opportunities at success. Thus, singling out TA recipients and adding yet another layer of such generalization does not appear to be helpful. Further, the commenter said that if the state of Missouri genuinely wants to ensure that state dollars are not being used to support illegal drug use, then such a standard should be applied equally across all recipients of state dollars.
RESPONSE: This is a comment on the statute itself, and the policy of the statute is beyond the scope of the rulemaking procedure. No changes have been made to the rule as a result of this comment.

COMMENT #5: Missouri Catholic Conference Catholic Charities of Missouri, LLC asserted that many of the clients served by the commenter's organization struggle with physical and mental disabilities that prevent them from leading normal lives and make breaking the cycle of poverty even more challenging. The commenter said that adding another hurdle for them to receive temporary financial assistance is just one (1) more assault on their dignity as human beings.
RESPONSE: This is a comment on the statute itself, and the policy of the statute is beyond the scope of the rulemaking procedure. No changes have been made to the rule as a result of this comment.

COMMENT #6: Good Shepherd Children and Family Services asserted reliable income (i.e., an ability to provide for dependent children) is often a key factor in decisions to place children in foster care or to reunify families involved in the foster care system. The comment asserted that any rules that tend to impact individuals differentially by denying or redirecting TA benefits would also be expected to make it more likely that their children are taken into state custody and/or more likely that their children will remain in the state's custody longer. As such, the commenter believed the rules may have an unintended and negative social and fiscal impact in Missouri.
RESPONSE: This is a comment on the statute itself, and the policy of the statute is beyond the scope of the rulemaking procedure. No changes have been made to the rule as a result of this comment.

COMMENT #7: Alice Kitchen, LSCSW, MPA asserted that section 208.027, RSMo Supp. 2012, requires drug testing of those suspected of using controlled substances and not the more abused drugs, namely alcohol and prescription drugs.
RESPONSE: This is a comment on the statute itself, and the policy of the statute is beyond the scope of the rulemaking procedure. No changes have been made to the rule as a result of this comment.

COMMENT #8: Alice Kitchen, LSCSW, MPA and Catholic Charities of Kansas City–St. Joseph Caritas Center asserted that the requirement in section 208.027, RSMo Supp. 2012, for state staff to report TA recipients who test positive on a drug test or refuse to take a drug test to the Children's Division for suspected abuse or neglect raises several potential concerns. Alice Kitchen, LSCSW, MPA asserted the current definition does not include this as a reason to suspect child abuse or neglect. Ms. Kitchen asserted that Children's Division staff will be spending time on these reports that do not rise to the level of the state statute when more serious cases that need immediate attention could be delayed. Catholic Charities of Kansas City–St. Joseph Caritas Center asserted the number of children coming into foster care is increasing rapidly in some counties in Missouri, which has caused an overloaded child welfare system. Refusing a drug test is certainly not child abuse, and while child safety is profoundly important, drug use by a parent in and of itself is not child abuse either. Forcing more hotline calls in situations where there are no identified concerns of child abuse/neglect could very likely further burden Children's Division investigative units that are already experiencing high caseloads and call volumes. Catholic Charities of Kansas City–St. Joseph Caritas Center asserted foster care hotlines and cases cost the state a substantial amount of money to service; increasing that volume for situations that potentially only stem from a failed or refused drug test would seem to have the exact opposite fiscal impact than what was intended regarding drug testing for TA benefits.
RESPONSE: This is a comment on the statute itself, and the policy of the statute is beyond the scope of the rulemaking procedure. No changes have been made to the rule as a result of this comment.

COMMENT #9: Alice Kitchen, LSCSW, MPA and the Catholic Charities of Kansas City–St. Joseph Caritas Center asserted the cost to implement this legislation is not the best possible usage of public funding and does not meet the goals and objectives of TA. Alice Kitchen, LSCSW, MPA asserted the cost could be as high as $6.7 million to implement drug testing. She asserted the Missouri state budget already has a shortfall of $50 to $60 million not to include this expense.
RESPONSE: This is a comment on the statute itself, and the policy of the statute is beyond the scope of the rulemaking procedure. No changes have been made to the rule as a result of this comment.

COMMENT #10: Catholic Charities of Kansas City–St. Joseph Caritas Center asserted that placing drug testing requirements on TA benefits in such a manner increases the likelihood that an immediate need will not be met. The commenter said considering the majority of TA recipients are children, in many cases that unmet need will directly impact a child. The commenter said it has been shown in

other states where similar rules have been introduced, it does not improve the state's budget situation, primarily because the infrastructure and processes needed for implementation of such procedures are substantial. The practice of drug testing as a requirement for state funded assistance and support does not appear to be an effective measure when all things are considered, and it certainly is not fair or effective when the standard is only applied to the state's most vulnerable populations.
RESPONSE: This is a comment on the statute itself, and the policy of the statute is beyond the scope of the rulemaking procedure. No changes have been made to the rule as a result of this comment.

COMMENT #11: Catholic Charities Archdiocese of Saint Louis commented it noted a woeful lack of understanding for those who suffer from dual diagnosis of mental health and drug addiction. Funding for mental health and addiction treatment is being reduced. Recipients are denied assistance while waiting months to begin treatment. The commenter's organization recognizes that few people recover with one (1) attempt and addiction is often a lifelong condition. The commenter said shall these people be denied the benefits that help them overcome their addiction?
RESPONSE: This is a comment on the statute itself, and the policy of the statute is beyond the scope of the rulemaking procedure. No changes have been made to the rule as a result of this comment.

COMMENT #12: Alice Kitchen, LSCSW, MPA commented that state workers in FSD already work with TA recipients around social obstacles such as mental illness, drug/alcohol abuse, and domestic violence to connect them with resources to alleviate problems and promote stability. This makes it evident that this legislation is misguided. And who has the most to lose? Vulnerable children caught between their parent's behavior and highly judgmental elected officials. The commenter claimed that the only entities that stand to benefit are the drug testing companies. This is mean-spirited and an embarrassment to our citizens. This reminds me of the quote that says, "the justice of a society is not measured by how it treats its best but rather how it treats the most vulnerable among them."
RESPONSE: This is a comment on the statute itself, and the policy of the statute is beyond the scope of the rulemaking procedure. No changes have been made to the rule as a result of this comment.

COMMENT #13: Legal Services of Eastern Missouri, Inc. asserted that 13 CSR 40-2.420(2) improperly goes beyond the statute and conflate a "refusal to cooperate" with a "failure to cooperate." The statute does not allow FSD to sanction individuals who merely fail to cooperate with the drug testing procedures. Rather, it only allows sanctions for individuals who test positive for illegal substances or refuse to submit to a drug test. Failure and refusal are simply not the same things. Moreover, given that the statute authorizes such a severe penalty—a three- (3-) year disqualification—it is clear why such penalties can only be based upon an actual refusal to submit to a drug test. The commenter asserted a three- (3-) year disqualification from an alleged failure to cooperate (e.g. from a missed appointment) is so severe that it clearly goes beyond what the statute authorizes. Legal Services of Eastern Missouri, Inc. and the Missouri Catholic Conference Catholic Charities of Missouri, LLC also asserted in their comment to 13 CSR 40-2.420(2) that there are many circumstances that could cause an alleged "failure" to cooperate that do not justify a three- (3-) year sanction, such as lack of transportation, mental illness or other disabilities, lack of child care, conflicting schedules, lost mail resulting in lack of notice to the individual, and the lack of financial resources to obtain and pay for copies of medical records to provide to FSD "to confirm the result of drug testing." The unavailability of accessible treatment programs and the lack of transportation to drug testing or treatment programs is a particularly significant problem. The commenters asserted the unavailability of eligibility specialists given other work duties and limited access to eligibility specialists by phone can and will negatively affect an applicant or recipient's ability to communicate that he or she is unable to appear for a drug test for a good cause reason. Therefore, the rules should be amended to delete provisions that authorize sanctions based on a "failure" to cooperate. The commenters asserted the rules should, at minimum, be amended to include "good cause" for any "failure" or "refusal" to cooperate where the applicant or recipient has been actively seeking, in good faith, to cooperate with the drug testing procedures, but is unable to do so (e.g. lack of transportation, mental illness or other disability, child care, etc) to ensure that individuals who cooperate in good faith are not improperly sanctioned since good faith cooperation is not the same thing as refusing to submit to a drug test.
RESPONSE AND EXPLANATION OF CHANGE: Section 208.027, RSMo Supp. 2012, does not provide for a "good cause" exception to the drug testing procedures. Disqualifying individuals from TA benefits for three (3) years for deliberately not cooperating with the drug screening or the drug testing process is within the authority granted in section 208.027, RSMo Supp. 2012. However, pursuant to comment #13, in order to be consistent with section 208.027.1, RSMo Supp. 2012, FSD will change 13 CSR 40-2.440(1)(A)1., 13 CSR 40-2.440(1)(A)2., 13 CSR 40-2.440(3)(E)2., and 13 CSR 40-2.440(3)(E)3. to remove the word "fails" "failed or" and "or fails" from the proposed rules.

COMMENT #14: Legal Services of Eastern Missouri, Inc; the American Civil Liberties Union of Missouri and Kansas; and the Missouri Catholic Conference Catholic Charities of Missouri, LLC asserted in their comment to 13 CSR 40-2.410(3) that FSD should not rely on the application for or receipt of TA benefits to impute consent on the part of TA recipients to obtain "all relevant information necessary to determine whether the individual engages in the illegal use of a controlled substance" by filling out and turning in an application. The commenters urged that this scheme is coercive and violates the Constitution. The comments can be broken down into two (2) subject areas.

1. The American Civil Liberties Union of Missouri and Kansas commented that the proposed rule will force recipients to agree to unconstitutional searches as a condition of their participation in the TA program. Individuals screened using the new assessment tool may well be subjected to arbitrary searches, as there is no indication what the tool will be or what standards will be employed to determine whether there is in fact a reasonable cause. The commenter claimed the U.S. Supreme Court has long held that the government may not restrict the exercise of a constitutional right in exchange for another right or discretionary benefit. The doctrine is based primarily on the notion that the government may not accomplish indirectly—here, forcing individuals to surrender their Fourth Amendment rights without good reason—what it cannot do directly. Therefore, the commenter claimed the entire regulatory scheme subjecting individuals to arbitrary and unreasonable searches in exchange for the receipt of TA benefits is unconstitutional.

2. Legal Services of Eastern Missouri, Inc; the American Civil Liberties Union of Missouri and Kansas; and the Missouri Catholic Conference Catholic Charities of Missouri, LLC claimed the proposed rule will subject TA recipients to violations of privacy, including medical privacy without their informed consent. The proposed rule presumes consent but fails to define "all relevant information." In order to protect medical privacy, the commenter urged that the division should prepare and use a specific form in which a recipient agrees to a specific release of specified medical information. The privacy rule, Health Insurance Portability and Accountability Act of 1996 (HIPAA), requires as much. Furthermore, if a recipient chooses to have a protective payee in place of testing, etc., there is no need for a broad authorization releasing "protected health information." The broad consent provision goes beyond the requirements of the legislation and fails to comply with other federal and state laws protecting medical privacy. To ensure that recipients are provided the opportunity to give informed consent, the application must be amended to

ensure that the recipients know, up front, that they are consenting to the state receiving the potential adverse information. The commenter urged that a separate notice must be created to inform current TA recipients in plain language that receiving and using their next month's TA benefits will be deemed as consent to "obtain all relevant information necessary to determine whether the [recipient] engages in the illegal use of controlled substances."
RESPONSE AND EXPLANATION OF CHANGE: In light of this comment, FSD will delete paragraph 13 CSR 40-2.440(3)(E)4. This change is necessary to make the rules consistent in light of the change to 13 CSR 40-2.410(3).

13 CSR 40-2.440 Hearings for Proceedings under 13 CSR 40-2.400 through 13 CSR 40-2.450

(1) Eligibility for Hearing.

(A) Any applicant for or recipient of Temporary Assistance shall have an automatic administrative hearing before the Director of the Family Support Division or his/her designee when he/she—

1. Refuses to cooperate with the screening process;
2. Refuses to submit to a drug test; or
3. Tests positive for the illegal use of controlled substances for the first time.

(3) Hearing Procedure. The following procedure shall apply to all administrative hearings required by either subsection (1)(A) or (1)(B).

(E) The Family Support Division shall have the burden to establish by a preponderance of the evidence that the individual—

1. Tested positive for the illegal use of a controlled substance;
2. Refused to cooperate or submit to the screening as set forth in 13 CSR 40-2.410;
3. Refused to cooperate or submit to the test for illegal use of a controlled substance as required by 13 CSR 40-2.420;
4. Failed or refused to participate in an appropriate substance abuse treatment program as set forth in 13 CSR 40-2.420; or
5. Failed or refused to successfully complete substance abuse treatment as set forth in 13 CSR 40-2.440.

Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 40—Family Support Division
Chapter 2—Income Maintenance

ORDER OF RULEMAKING

By the authority vested in the Department of Social Services, Family Support Division, under section 208.027, RSMo Supp. 2012, the division adopts a rule as follows:

13 CSR 40-2.450 is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on August 1, 2012 (37 MoReg 1163–1164). The sections with changes are reprinted here. This proposed rule becomes effective thirty (30) days after the publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The Family Support Division (FSD) received four (4) letters commenting on the proposed rule. Some of the comments were similar in nature. Therefore, due to the similarity in both the language and general subject matter of these comments, they have been grouped together.

COMMENT #1: The Missouri Catholic Conference Catholic Charities of Missouri, LLC; Legal Services of Eastern Missouri, Inc.; and the Catholic Charities Archdiocese of Saint Louis asserted that 13 CSR 40-2.450(7)(C) exceeds the grant of authority provided by section 208.027, RSMo Supp. 2012, in restricting the use of Temporary Assistance (TA) benefits by the protective payee. The commenters asserted that the statement that the TA benefits "shall not be given or used [by the protective payee] in any way to benefit the ineligible individual" is problematic. The proposed rule does not address how the money is to be managed. The commenters asserted this provision implies that the ineligible individual can no longer live in his/her home if TA funds were used for rent, utilities, or could not eat a meal purchased for the family with TA funds. The commenters asserted this provision goes beyond the requirements of the legislation and should be deleted from the rule.
RESPONSE: The proposed rule 13 CSR 40-2.450(7)(C) has not been properly quoted. The proposed rule states that the protective payee must use the TA benefits as follows, "[S]hall not be given to or used in any way to benefit the ineligible individual, or an individual or entity that does not provide a need for the Temporary Assistance household." The proposed rule does not imply that the TA benefits cannot be used for rent or food purchased for the family of the ineligible individual. The proposed rule allows TA benefits to be used to benefit the household in which the ineligible TA individual lives. The proposed rule does not go beyond the requirements of section 208.027, RSMo Supp. 2012. No changes have been made to the rule as a result of this comment.

COMMENT #2: Legal Services of Eastern Missouri, Inc. asserted that 13 CSR 40-2.450(4) should grant the recipient the right to object to the state's selection of a protective payee and to request that the protective payee be changed to another person. The rules do not give the TA applicant/recipient the opportunity to object to the protective payee selected by the state to administer TA benefits for the rest of the household. The commenter asserted the rule should provide an opportunity to challenge these determinations to protect against the appointment of individuals who are not appropriate or may be detrimental to the children's well-being (such as a relative who has previously been abusive).
RESPONSE AND EXPLANATION OF CHANGE: The proposed rule gives the FSD the authority to void or terminate the appointment of individuals who fail to meet the qualifications set forth in the proposed rule. After considering the comment, FSD will make a change in the rule to include a provision that the recipient may nominate an individual to be their protective payee. If the individual does not nominate a person or the person nominated does not meet the qualification set out in the proposed rule, FSD shall nominate the protective payee.

COMMENT #3: Clinical Law Offices, Saint Louis University School of Law asserted that 13 CSR 40-2.450(4) notes that if a recipient does fail a drug test, the proposed rule states that the division will distribute money to children through a third party chosen by the state. The commenter asserts that the proposed rule does not stipulate the details, qualifications, and procedures that are needed to adequately determine who will assume this position. The commenter asserted that with a lack of standardized procedures and qualifications, there are inadequate safeguards to protect children from an abuse of discretion with the funds. The commenter proposed the development of procedures and qualifications to determine who will distribute this money to the children and ensure the money is properly used for the betterment of the children. The commenter asserted the ability of a relative or other person to use the control of benefits to control and manipulate the TA family is too great to allow a system with no safeguards. The commenter asserted that the proposed rules do not provide any system to "watch the watchers."
RESPONSE: The proposed rule sets forth qualifications that have to be met by the potential candidate for the position of protective payee. The rule has procedures in place to allow FSD to make the decision to appoint or remove a protective payee. No changes have been made to the rule as a result of this comment.

COMMENT #4: Missouri Catholic Conference Catholic Charities of

Missouri, LLC; Missouri Association of Social Welfare; The American Civil Liberties Union of Missouri and Kansas; Clinical Law Offices, Saint Louis University School of Law; Catholic Charities of Kansas City–St. Joseph Caritas Center; and Alice Kitchen, LSCSW, MPA made similar comments to section 208.027, RSMo Supp. 2012. The commenters asserted that the state of Missouri, by passing this statute is making the presumption that indigent Missourians who apply for and receive temporary welfare benefits are more apt to use illicit drugs than are other recipients of state benefits. The commenters believed that there is no evidence to support this presumption. Catholic Charities of Kansas City–St. Joseph Caritas Center and Alice Kitchen asserted the legislation was discriminatory because it targeted TA recipients because they get a state subsidy. Other individuals who get a state subsidy are not drug tested. Thus, singling out TA recipients and adding another layer of generalizations is not helpful. Clinical Law Offices, Saint Louis University School of Law asserted the proposed rules were not designed to achieve their purpose and requiring TA recipients to submit to drug testing will substantially harm these individuals by engulfing them in fear, anxiety, and a lack of trust. The comments assert that the available evidence shows that the rate of illicit drug use among recipients of TA benefits falls significantly below the rate of illicit drug use among other members of the population as a whole or those other segments of population that receive other forms of government assistance. The American Civil Liberties Union of Missouri and Kansas cited to the case of *Lebron v. Wilkins*, 820 F. Supp.2d 1273, 1277 (M.D. Fla. 2011) as support noting that this case found that "drug use among the tested TA population was found to be significantly lower than drug use among welfare recipients in other national studies." Clinical Law Offices, Saint Louis University School of Law concluded the proposed rules constitute an attempt to target the poor of our communities is misguided. Catholic Charities of Kansas City–St. Joseph Caritas Center said that individuals living in poverty are already dealing with a number of stereotypes and generalizations that negatively impact their opportunities at success. Thus, singling out TA recipients and adding yet another layer of such generalization does not appear to be helpful. Further, the commenter said that if the state of Missouri genuinely wants to ensure that state dollars are not being used to support illegal drug use, then such a standard should be applied equally across all recipients of state dollars.
RESPONSE: This is a comment on the statute itself, and the policy of the statute is beyond the scope of the rulemaking procedure. No changes have been made to the rule as a result of this comment.

COMMENT #5: Missouri Catholic Conference Catholic Charities of Missouri, LLC asserted that many of the clients served by the commenter's organization struggle with physical and mental disabilities that prevent them from leading normal lives and make breaking the cycle of poverty even more challenging. The commenter said that adding another hurdle for them to receive temporary financial assistance is just one (1) more assault on their dignity as human beings.
RESPONSE: This is a comment on the statute itself, and the policy of the statute is beyond the scope of the rulemaking procedure. No changes have been made to the rule as a result of this comment.

COMMENT #6: Good Shepherd Children and Family Services asserted reliable income (i.e., an ability to provide for dependent children) is often a key factor in decisions to place children in foster care or to reunify families involved in the foster care system. The comment asserted that any rules that tend to impact individuals differentially by denying or redirecting TA benefits would also be expected to make it more likely that their children are taken into state custody and/or more likely that their children will remain in the state's custody longer. As such, the commenter believed the rules may have an unintended and negative social and fiscal impact in Missouri.
RESPONSE: This is a comment on the statute itself, and the policy of the statute is beyond the scope of the rulemaking procedure. No changes have been made to the rule as a result of this comment.

COMMENT #7: Alice Kitchen, LSCSW, MPA asserted that section 208.027, RSMo Supp. 2012, requires drug testing of those suspected of using controlled substances and not the more abused drugs, namely alcohol and prescription drugs.
RESPONSE: This is a comment on the statute itself, and the policy of the statute is beyond the scope of the rulemaking procedure. No changes have been made to the rule as a result of this comment.

COMMENT #8: Alice Kitchen, LSCSW, MPA and Catholic Charities of Kansas City–St. Joseph Caritas Center asserted that the requirement in section 208.027, RSMo Supp. 2012, for state staff to report TA recipients who test positive on a drug test or refuse to take a drug test to the Children's Division for suspected abuse or neglect raises several potential concerns. Alice Kitchen, LSCSW, MPA asserted the current definition does not include this as a reason to suspect child abuse or neglect. Ms. Kitchen asserted that Children's Division staff will be spending time on these reports that do not rise to the level of the state statute when more serious cases that need immediate attention could be delayed. Catholic Charities of Kansas City–St. Joseph Caritas Center asserted the number of children coming into foster care is increasing rapidly in some counties in Missouri, which has caused an overloaded child welfare system. Refusing a drug test is certainly not child abuse, and while child safety is profoundly important, drug use by a parent in and of itself is not child abuse either. Forcing more hotline calls in situations where there are no identified concerns of child abuse/neglect could very likely further burden Children's Division investigative units that are already experiencing high caseloads and call volumes. Catholic Charities of Kansas City–St. Joseph Caritas Center asserted foster care hotlines and cases cost the state a substantial amount of money to service; increasing that volume for situations that potentially only stem from a failed or refused drug test would seem to have the exact opposite fiscal impact than what was intended regarding drug testing for TA benefits.
RESPONSE: This is a comment on the statute itself, and the policy of the statute is beyond the scope of the rulemaking procedure. No changes have been made to the rule as a result of this comment.

COMMENT #9: Alice Kitchen, LSCSW, MPA and the Catholic Charities of Kansas City–St. Joseph Caritas Center asserted the cost to implement this legislation is not the best possible usage of public funding and does not meet the goals and objectives of TA. Alice Kitchen, LSCSW, MPA asserted the cost could be as high as $6.7 million to implement drug testing. She asserted the Missouri state budget already has a shortfall of $50 to $60 million not to include this expense.
RESPONSE: This is a comment on the statute itself, and the policy of the statute is beyond the scope of the rulemaking procedure. No changes have been made to the rule as a result of this comment.

COMMENT #10: Catholic Charities of Kansas City–St. Joseph Caritas Center asserted that placing drug testing requirements on TA benefits in such a manner increases the likelihood that an immediate need will not be met. The commenter said considering the majority of TA recipients are children, in many cases that unmet need will directly impact a child. The commenter said it has been shown in other states where similar rules have been introduced, it does not improve the state's budget situation, primarily because the infrastructure and processes needed for implementation of such procedures are substantial. The practice of drug testing as a requirement for state funded assistance and support does not appear to be an effective measure when all things are considered, and it certainly is not fair or effective when the standard is only applied to the state's most vulnerable populations.
RESPONSE: This is a comment on the statute itself, and the policy of the statute is beyond the scope of the rulemaking procedure. No

changes have been made to the rule as a result of this comment.

COMMENT #11: Catholic Charities Archdiocese of Saint Louis commented it noted a woeful lack of understanding for those who suffer from dual diagnosis of mental health and drug addiction. Funding for mental health and addiction treatment is being reduced. Recipients are denied assistance while waiting months to begin treatment. The commenter's organization recognizes that few people recover with one (1) attempt and addiction is often a lifelong condition. The commenter said shall these people be denied the benefits that help them overcome their addiction?
RESPONSE: This is a comment on the statute itself, and the policy of the statute is beyond the scope of the rulemaking procedure. No changes have been made to the rule as a result of this comment.

COMMENT #12: Alice Kitchen, LSCSW, MPA commented that state workers in FSD already work with TA recipients around social obstacles such as mental illness, drug/alcohol abuse, and domestic violence to connect them with resources to alleviate problems and promote stability. This makes it evident that this legislation is misguided. And who has the most to lose? Vulnerable children caught between their parent's behavior and highly judgmental elected officials. The commenter claimed that the only entities that stand to benefit are the drug testing companies. This is mean-spirited and an embarrassment to our citizens. This reminds me of the quote that says, "the justice of a society is not measured by how it treats its best but rather how it treats the most vulnerable among them."
RESPONSE: This is a comment on the statute itself, and the policy of the statute is beyond the scope of the rulemaking procedure. No changes have been made to the rule as a result of this comment.

13 CSR 40-2.450 Assignment of a Protective Payee Over Temporary Assistance Benefits When the Head-of-Household is Declared Ineligible for Temporary Assistance Pursuant to 13 CSR 40-2.400 through 13 CSR 40-2.440

(4) The Family Support Division shall designate the protective payee, within forty-five (45) days of the administrative hearing decision that affirms the division as outlined in 13 CSR 40-2.440 or when a new protective payee must be designated.

(A) The Temporary Assistance head-of-household may nominate an individual to be their protective payee.

(B) A relative, friend, clergy person, or other qualified adult may be designated as the protective payee.

(C) The protective payee shall certify to the division he/she meets the following qualifications before being appointed to be a protective payee:

1. Over the age of twenty-one (21);

2. Able to read, write, and willing and able to act in a fiduciary capacity to handle funds on behalf of another person;

3. Has the ability to keep his/her current residence and mailing address on file at all times with the Family Support Division and keep the individual and other household members informed of his/her current address and contact information;

4. Able to maintain records and account for the use of funds as provided in this regulation;

5. The Department of Social Services has not established a claim against him/her for fraud or misuse arising from any program administered by the Department of Social Services;

6. Has not been convicted, pled guilty or nolo contendere, or received a suspended imposition of sentence (regardless of whether incarceration actually occurred) of any felony;

7. Has not been convicted, pled guilty or nolo contendere, or received a suspended imposition of sentence (regardless of whether incarceration actually occurred) of any misdemeanor set forth in Chapter 570, RSMo;

8. Has not been convicted, pled guilty or nolo contendere, or received a suspended imposition of sentence (regardless of whether incarceration actually occurred) of any misdemeanor involving the use and/or possession of controlled substances;

9. Has not been convicted, pled guilty or nolo contendere, or received a suspended imposition of sentence (regardless of whether incarceration actually occurred) of any misdemeanor involving the ineligible individual or a family member that is in the Temporary Assistance household;

10. Has not been placed on the central registry maintained by the Department of Social Services for any actions or inaction involving the ineligible individual or a family member that is in the Temporary Assistance household; and

11. Has no civil or criminal court order that hinders the ability of the protective payee to perform any duties as provided in this regulation.

(D) The protective payee has an affirmative obligation to notify the division of any changes in circumstances that would affect his/her qualifications to serve as protective payee as set forth in section (4) including changes in his/her address or contact information within ten (10) days of the change.

Title 20—DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION
Division 2010—Missouri State Board of Accountancy
Chapter 2—General Rules

ORDER OF RULEMAKING

By the authority vested in the Missouri State Board of Accountancy under sections 326.256, 326.262, and 326.268, RSMo Supp. 2012, the board amends a rule as follows:

20 CSR 2010-2.005 Definitions **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on September 17, 2012 (37 MoReg 1399–1400). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 20—DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION
Division 2010—Missouri State Board of Accountancy
Chapter 3—Professional Ethics—Rules of Conduct

ORDER OF RULEMAKING

By the authority vested in the Missouri State Board of Accountancy under section 326.271, RSMo Supp. 2012, the board amends a rule as follows:

20 CSR 2010-3.010 General Purpose of Ethics Rules **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on September 17, 2012 (37 MoReg 1400). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 20—DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION
Division 2010—Missouri State Board of Accountancy
Chapter 3—Professional Ethics—Rules of Conduct

ORDER OF RULEMAKING

By the authority vested in the Missouri State Board of Accountancy under sections 326.271, 326.280, and 326.289, RSMo Supp. 2012, the board amends a rule as follows:

20 CSR 2010-3.060 Other Responsibilities and Practices **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on September 17, 2012 (37 MoReg 1400). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 20—DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION
Division 2010—Missouri State Board of Accountancy
Chapter 5—Peer Review

ORDER OF RULEMAKING

By the authority vested in the Missouri State Board of Accountancy under sections 326.271 and 326.289.9., RSMo Supp. 2012, the board amends a rule as follows:

20 CSR 2010-5.070 Peer Review Standards **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on September 17, 2012 (37 MoReg 1400–1401). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 20—DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION
Division 2110—Missouri Dental Board
Chapter 2—General Rules

ORDER OF RULEMAKING

By the authority vested in the Missouri Dental Board under section 332.031.2., RSMo 2000, the board rescinds a rule as follows:

20 CSR 2110-2.120 Dental Assistants **is rescinded**.

A notice of proposed rulemaking containing the proposed rescission was published in the *Missouri Register* on September 4, 2012 (37 MoReg 1318). No changes have been made in the proposed rescission, so it is not reprinted here. This proposed rescission becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 20—DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION
Division 2110—Missouri Dental Board
Chapter 2—General Rules

ORDER OF RULEMAKING

By the authority vested in the Missouri Dental Board under section 332.031.2., RSMo 2000, and sections 332.011 and 332.098, RSMo Supp. 2012, the board adopts a rule as follows:

20 CSR 2110-2.120 Dental Assistants **is adopted**.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on September 4, 2012 (37 MoReg 1318–1324). No changes have been made in the text of the proposed rule, so it is not reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The board received one (1) comment on the proposed rule.

COMMENT #1: Janet Sell, Director of the Dental Assisting Program at Ozarks Technical Community College submitted a letter supporting the proposal as written. Ms. Sell states that the rule, as written, will have a positive impact on the education of dental assistants and the willingness of dentists to hire qualified dental assistants to perform expanded functions.
RESPONSE: No changes have been made as a result of this comment.

Title 20—DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION
Division 2110—Missouri Dental Board
Chapter 2—General Rules

ORDER OF RULEMAKING

By the authority vested in the Missouri Dental Board under sections 332.031 and 332.091, RSMo 2000, and sections 332.071, 332.098, and 332.311, RSMo Supp. 2012, the board amends a rule as follows:

20 CSR 2110-2.130 Dental Hygienists **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on September 4, 2012 (37 MoReg 1325–1330). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 20—DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION
Division 2110—Missouri Dental Board
Chapter 2—General Rules

ORDER OF RULEMAKING

By the authority vested in the Missouri Dental Board under section 332.031.3., RSMo 2000, the board amends a rule as follows:

20 CSR 2110-2.170 Fees **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on September 4, 2012 (37 MoReg 1331–1335). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 20—DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION
Division 2110—Missouri Dental Board
Chapter 4—Sedation

ORDER OF RULEMAKING

By the authority vested in the Missouri Dental Board under sections 332.031 and 332.361, RSMo 2000, and 332.071, RSMo Supp. 2012, the board rescinds a rule as follows:

20 CSR 2110-4.010 Definitions **is rescinded**.

A notice of proposed rulemaking containing the proposed rescission was published in the *Missouri Register* on September 4, 2012 (37 MoReg 1336). No changes have been made in the proposed rescission, so it is not reprinted here. This proposed rescission becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 20—DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION
Division 2110—Missouri Dental Board
Chapter 4—Sedation

ORDER OF RULEMAKING

By the authority vested in the Missouri Dental Board under sections 332.031 and 332.361, RSMo 2000, and section 332.071, RSMo Supp. 2012, the board adopts a rule as follows:

20 CSR 2110-4.010 Definitions **is adopted**.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on September 4, 2012 (37 MoReg 1336–1338). No changes have been made in the text of the proposed rule, so it is not reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 20—DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION
Division 2110—Missouri Dental Board
Chapter 4—Sedation

ORDER OF RULEMAKING

By the authority vested in the Missouri Dental Board under sections 332.031 and 332.361, RSMo 2000, and 332.071, RSMo Supp. 2012, the board rescinds a rule as follows:

20 CSR 2110-4.020 Conscious Sedation **is rescinded**.

A notice of proposed rulemaking containing the proposed rescission was published in the *Missouri Register* on September 4, 2012 (37 MoReg 1338). No changes have been made in the proposed rescission, so it is not reprinted here. This proposed rescission becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 20—DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION
Division 2110—Missouri Dental Board
Chapter 4—Sedation

ORDER OF RULEMAKING

By the authority vested in the Missouri Dental Board under sections 332.031 and 332.361, RSMo 2000, and section 332.071, RSMo Supp. 2012, the board adopts a rule as follows:

20 CSR 2110-4.020 Moderate Sedation **is adopted**.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on September 4, 2012 (37 MoReg 1338–1345). No changes have been made in the text of the proposed rule, so it is not reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The board received comments from fourteen (14) separate sources on section (6) the proposed rule. Due to the similarity of the comments, those are addressed in two (2) comments.

COMMENT #1: Vicki Coopmans, CRNA, PhD, President of the Missouri Association of Nurse Anesthetists; Robert P. Walsh, CRNA; David Schreiner, CRNA; Don Beissel, CRNA; Bryan Baxley, CRNA; Mark Lipari, CRNA; Chandler Bowser, CRNA; Suzanne Dufek, CRNA; and Mark Lee, CRNA provided comments in opposition to section (6) of the rule which requires a dentist who is supervising a CRNA for a moderate sedation procedure to obtain a moderate sedation permit. The concerns they outline include:

- Other healthcare providers under whose supervision a CRNA may work are not required to obtain sedation permits;
- The American Dental Association's 2007 "Guidelines for the Use of Sedation and General Anesthesia by Dentists" do not include a recommendation that a dentist supervising a CRNA possess a sedation permit;
- Some states do allow dentists to supervise CRNAs without the dentist possessing a sedation permit;
- The training and education to become a CRNA is more extensive than the education and training to become a permitted dentist; and
- A concern that requiring the dentist supervising a CRNA to obtain a sedation permit will limit patient access to care in rural areas and increase the cost of providing sedation.

RESPONSE: The board has worked with the Missouri Association of Nurse Anesthetists over the past several years during the development of these proposals. Specifically, on March 3, 2010, and September 25, 2009, representatives of the Missouri Association of

Nurse Anesthetists met with the board and discussed these concerns. As they point out in their comments, section 334.104.7., RSMo, does allow a CRNA to be supervised by a physician, dentist, or podiatrist who is immediately available if needed. The board's rationale for requiring a dentist supervising the CRNA to have the permit is based upon the fact that dentists receive very little, if any, training in dental school regarding anesthesia and sedation. They receive absolutely no training in supervising someone else providing anesthesia and sedation. Since section 334.104.7, RSMo, requires that a dentist supervising a CRNA be "immediately available if needed" it is the dental board's intent that the supervising dentist be trained in sedation and sedation emergencies should they be needed immediately. Without training the dentist in sedation and sedation-related emergencies, the requirement for the dentist to be immediately available while supervising the CRNA becomes ineffective. While some states do not require the dentist supervising the CRNA to obtain a sedation permit, there are many more that have now included specific requirements for the supervising dentist to obtain a sedation permit. A cursory search showed such specific requirements in Arizona, California, Texas, Tennessee, and Mississippi. Since the dentist supervising the CRNA is ultimately responsible for the care and safety of the patient, the dentist is ultimately responsible for assessing the appropriateness of the treatment for an individual patient. No changes have been made to the rule as a result of this comment.

COMMENT #2: John Steuterman, Jr., DDS, chairman of the Missouri Dental Board's Conscious Sedation Evaluation Committee; Michael Hoffmann, DDS; Donald Raphael, DDS; Thomas E. Saak, MD, past president of the Missouri Society of Anesthesiologists; and Christopher Young, MD, president of the Missouri Society of Anesthesiologists submitted letters in support of the proposed rule as written. Dr. Hoffmann emphasized that dentists do not receive training on supervising auxiliary personnel during sedation procedures in dental school. Dr. Steuterman articulated that dental sedation is much different than sedation being performed in a podiatric practice or most medical procedures because the CRNA and the treating/supervising dentist both have to do their jobs in the same place, the patient's airway. Should a problem occur, it is the dentist who is ultimately responsible for the patient's safety. Therefore it is prudent for the dentist to have the appropriate training in sedation and sedation emergency procedures.
RESPONSE: No changes have been made to the rule as a result of this comment.

Title 20—DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION
Division 2110—Missouri Dental Board
Chapter 4—Sedation

ORDER OF RULEMAKING

By the authority vested in the Missouri Dental Board under sections 332.031 and 332.361, RSMo 2000, and section 332.071, RSMo Supp. 2012, the board amends a rule as follows:

20 CSR 2110-4.030 is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on September 4, 2012 (37 MoReg 1346–1349). Those sections with changes are reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The board received one (1) comment on the proposed amendment.

COMMENT #1: Allan Schwartz, DDS, CRNA, proposed a change to paragraph (11)(D)2. Dr. Schwartz recommended that the term "sterile water" be changed to "sterile diluent" because water is not always the proper diluent for some medications.
RESPONSE AND EXPLANATION OF CHANGE: The board agrees with this comment and has revised the rule.

20 CSR 2110-4.030 Guidelines for Administration of Moderate Sedation

(11) Resuscitation Equipment.

(D) In addition, parenteral moderate sedation permit holders should have immediate access to—

1. I.V. solutions and equipment for establishment of an I.V. route, and appropriate fluids;
2. Sterile diluent for injection and/or mixing or dilution of drugs;
3. Catheter suction; and
4. Syringes and needles for I.V. drug administration.

Title 20—DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION
Division 2110—Missouri Dental Board
Chapter 4—Sedation

ORDER OF RULEMAKING

By the authority vested in the Missouri Dental Board under sections 332.031 and 332.361, RSMo 2000, and section 332.071, RSMo Supp. 2012, the board amends a rule as follows:

20 CSR 2110-4.040 Deep Sedation/General Anesthesia **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on September 4, 2012 (37 MoReg 1349–1356). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The board received comments from fifteen (15) separate sources on section (5) of the proposed rule. Due to the similarity of the comments, those are addressed in two (2) comments.

COMMENT #1: Vicki Coopmans, CRNA, PhD, President of the Missouri Association of Nurse Anesthetists; Robert P. Walsh, CRNA; David Schreiner, CRNA; Don Beissel, CRNA; Bryan Baxley, CRNA; Mark Lipari, CRNA; Chandler Bowser, CRNA; Suzanne Dufek, CRNA; Allan Schwartz, DDS, CRNA; and Mark Lee, CRNA provided comments in opposition to section (5) of the rule which requires a dentist who is supervising a CRNA for a moderate sedation procedure to obtain a moderate sedation permit. The concerns they outline include:

- Other healthcare providers under whose supervision a CRNA may work are not required to obtain sedation permits;
- The American Dental Association's 2007 "Guidelines for the Use of Sedation and General Anesthesia by Dentists" do not include a recommendation that a dentist supervising a CRNA possess a sedation permit;
- Some states do allow dentists to supervise CRNAs without the dentist possessing a sedation permit;
- The training and education to become a CRNA is more extensive than the education and training to become a permitted dentist; and

- A concern that requiring the dentist supervising a CRNA to obtain a sedation permit will limit patient access to care in rural areas and increase the cost of providing sedation.

RESPONSE: The board has worked with the Missouri Association of Nurse Anesthetists over the past several years during the development of these proposals. Specifically, on March 3, 2010, and September 25, 2009, representatives of the Missouri Association of Nurse Anesthetists met with the board and discussed these concerns. As they point out in their comments, section 334.104.7., RSMo, does allow a CRNA to be supervised by a physician, dentist, or podiatrist who is immediately available if needed. The board's rationale for requiring a dentist supervising the CRNA to have the permit is based upon the fact that dentists receive very little, if any, training in dental school regarding anesthesia and sedation. They receive absolutely no training in supervising someone else providing anesthesia and sedation. Since section 334.104.7., RSMo, requires that a dentist supervising a CRNA be "immediately available if needed" it is the dental board's intent that the supervising dentist be trained in sedation and sedation emergencies should they be needed immediately. Without training the dentist in sedation and sedation-related emergencies, the requirement for the dentist to be immediately available while supervising the CRNA becomes ineffective. While some states do not require the dentist supervising the CRNA to obtain a sedation permit, there are many more that have now included specific requirements for the supervising dentist to obtain a sedation permit. A cursory search showed such specific requirements in Arizona, California, Texas, Tennessee, and Mississippi. Since the dentist supervising the CRNA is ultimately responsible for the care and safety of the patient, the dentist is ultimately responsible for assessing the appropriateness of the treatment for an individual patient. No changes have been made to the rule as a result of this comment.

COMMENT #2: John Steuterman, Jr., DDS, chairman of the Missouri Dental Board's Conscious Sedation Evaluation Committee; Michael Hoffmann, DDS; Donald Raphael, DDS; Thomas E. Saak, MD, past president of the Missouri Society of Anesthesiologists; and Christopher Young, MD, president of the Missouri Society of Anesthesiologists submitted letters in support of the proposed rule as written. Dr. Hoffmann emphasized that dentists do not receive training on supervising auxiliary personnel during sedation procedures in dental school. Dr. Steuterman articulated that dental sedation is much different than sedation being performed in a podiatric practice or most medical procedures because the CRNA and the treating/supervising dentist both have to do their jobs in the same place, the patient's airway. Should a problem occur, it is the dentist who is ultimately responsible for the patient's safety. Therefore it is prudent for the dentist to have the appropriate training in sedation and sedation emergency procedures.

RESPONSE: No changes have been made to the rule as a result of this comment.

This section may contain notice of hearings, correction notices, public information notices, rule action notices, statements of actual costs, and other items required to be published in the *Missouri Register* by law.

Title 20—DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION

IN ADDITION

Pursuant to section 226.096, RSMo, regarding the Construction Claims Binding Arbitration Cap for the Missouri Department of Transportation, the Director of Insurance, Financial Institutions and Professional Registration is required to calculate the new limit.

Using Implicit Price Deflator (IPD) for Personal Consumption Expenditures (PCE), as required by section 226.096, RSMo, the Construction Claims Binding Arbitration Cap for the Missouri Department of Transportation effective January 1, 2013, was established by the following calculation:

Index Based on 2005 Dollars	
Third Quarter 2011 IPD Index	114.290
Third Quarter 2012 IPD Index	116.008

New 2013 Limit = 2012 Limit × (2012 Index/2011 Index)

406,807 = 400,782 × (116.008/114.290)

Title 20—DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION

IN ADDITION

Pursuant to section 537.610, RSMo, regarding the Sovereign Immunity Limits for Missouri Public Entities, the Director of Insurance, Financial Institutions and Professional Registration is required to calculate the new limit on awards for liability.

Using Implicit Price Deflator (IPD) for Personal Consumption Expenditures (PCE), as required by section 537.610, RSMo, the two (2) new Sovereign Immunity Limits effective January 1, 2013, were established by the following calculations:

Index Based on 2005 Dollars	
Third Quarter 2011 IPD Index	114.290
Third Quarter 2012 IPD Index	116.008

New 2013 Limit = 2012 Limit × (2012 Index/2011 Index)

For all claims arising out of a single accident or occurrence:
2,657,587 = 2,618,230 × (116.008/114.290)

For any one (1) person in a single accident or occurrence:
398,638 = 392,734 × (116.008/114.290)

Title 20—DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION

IN ADDITION

Pursuant to section 105.711, RSMo, regarding the State Legal Expense Fund, the Director of Insurance, Financial Institutions and Professional Registration is required to calculate the new limit.

Using Implicit Price Deflator (IPD) for Personal Consumption Expenditures (PCE), as required by section 105.711, RSMo, the State Legal Expense Fund Limit effective January 1, 2013, was established by the following calculation:

Index Based on 2005 Dollars	
Third Quarter 2011 IPD Index	114.290
Third Quarter 2012 IPD Index	116.008

New 2013 Limit = 2012 Limit × (2012 Index/2011 Index)

416,141 = 409,978 × (116.008/114.290)

ADDITION TO STATUTORY LIST OF CONTRACTORS BARRED FROM PUBLIC WORKS PROJECTS

The following is an addition to the list of contractor(s) who have been prosecuted and convicted of violating the Missouri Prevailing Wage Law, and whose Notice of Conviction has been filed with the Secretary of State pursuant to Section 290.330, RSMo. Under this statute, no public body is permitted to award a contract, directly or indirectly, for public works (1) to Mr. Norman Bass, (2) to any other contractor or subcontractor that is owned, operated or controlled by Mr. Norman Bass including Municipal Construction Incorporated or (3) to any other simulation of Mr. Norman Bass or of Municipal Construction Incorporated for a period of one year, or until February 1, 2013.

Name of Contractor	Name of Officers	Address	Date of Conviction	Debarment Period
Norman Bass DBA Municipal Construction Incorporated Case No. 12SO-CR00103 Scott County Cir. Ct.		10150 Hawthorne Ridge Goodrich, MI 48438	2/01/12	2/01/2012-2/01/2013

Dated this 17 day of February, 2012.

Carla Buschjost, Director

The Secretary of State is required by sections 347.141 and 359.481, RSMo 2000, to publish dissolutions of limited liability companies and limited partnerships. The content requirements for the one-time publishing of these notices are prescribed by statute. This listing is published pursuant to these statutes. We request that documents submitted for publication in this section be submitted in camera ready 8 1/2" x 11" manuscript by email to dissolutions@sos.mo.gov.

NOTICE OF DISSOLUTION OF COMPANY

NOTICE OF DISSOLUTION TO ALL CREDITORS OF AND CLAIMANTS AGAINST HARTE INCORPORATED

On November 15, 2012, Harte Incorporated, a Missouri corporation (the "Corporation"), filed its Articles of Dissolution by Voluntary Action with the Missouri Secretary of State. The dissolution was effective on November 15, 2012.

You are hereby notified that if you believe you have a claim against the Corporation, you must submit a written summary of your claim to the Corporation care of Seigfreid Bingham, P.C., Attention: Stephen M. Kyle, 911 Main Street, Suite 2800, Kansas City, Missouri 64105. The written summary of your claim must include, at a minimum, the following information:

1. The name, address and telephone number of the claimant;

2. The amount of the claim;

3. The date on which the event that is the basis of your claim occurred; and

4. A brief description of the nature of the debt or the basis for the claim.

NOTICE: In accordance with Missouri law, all claims against the Corporation will be barred unless a proceeding to enforce the claim is commenced within two (2) years after the publication date of this notice.

Notice of Dissolution of Limited Partnership and Winding Up of Partnership Business:
To All Creditors of and Claimants Against McIntyre Family L.P.

On November 16, 2012 (effective December 28, 2012), McIntyre Family L.P., a Missouri limited partnership (the "Partnership"), filed a Certificate of Cancellation of Registration of Limited Partnership with the Missouri Secretary of State. Any claims against the Partnership may be sent to Beverly K. Jones, Registered Agent, PO Box 35, Tarkio, Missouri 64491.

All claims must include the name, address, and phone number of the claimant; the amount of the claim; the date on which the claim arose; the basis for the claim; and documentation supporting the claim.

All claims against the Partnership will be barred unless proceedings to enforce the claim are commenced within three (3) years after publication of this notice.

NOTICE OF WINDING UP OF LIMITED LIABILITY COMPANY TO ALL CREDITORS OF AND CLAIMANTS AGAINST LUMIX ENTERPRISES, L.L.C.

On, November 7, 2012, Lumix Enterprises, L.L.C., a Missouri limited liability company ("Company"), filed its Notice of Winding Up with the Missouri Secretary of State, effective on the filing date.

All persons and organizations must submit to Company, c/o Thomas D. Peebles, Jr., Carnahan, Evans, Cantwell & Brown, P.C., 2805 S. Ingram Mill, Springfield, Missouri 65804, a written summary of any claims against Company, including: 1) claimant's name, address and telephone number; 2) amount of claim; 3) date(s) claim accrued (or will accrue); 4) brief description of the nature of the debt or the basis for the claim; and 5) if the claim is secured, and if so, the collateral used as security.

Because of the dissolution, any claims against Company will be barred unless a proceeding to enforce the claim is commenced within three (3) years after the last of filing or publication of this Notice.

NOTICE TO UNKNOWN CREDITORS OF GEORGE K. BAUM MERCHANT BANC, L.L.C.

George K. Baum Merchant Banc, L.L.C. (the "Company") has been dissolved pursuant to Section 347.137 of the Missouri Limited Liability Company Act by filing its Articles of Termination with the Missouri Secretary of State on November 13, 2012. Pursuant to Section 347.141 of the Missouri Limited Liability Company Act, any claims against the Company must be sent to:

George K. Baum Merchant Banc., L.L.C.
c/o Andrew F. Sears
4801 Main Street, Suite 500
Kansas City, MO 64112

Claims submitted must include the following information: (1) claimant name, address, and phone number; (2) name of debtor; (3) account or other number by which the debtor may identify the creditor; (4) a brief description of the nature of the debt or the basis of the claim; (5) the amount of the claim; (6) the date the claim was incurred; and (7) supporting documentation for the claim, if any.

NOTICE: CLAIMS OF CREDITORS OF THE CORPORATION WILL BE BARRED UNLESS A PROCEEDING TO ENFORCE THE CLAIM IS COMMENCED WITHIN TWO (2) YEARS OF THE DATE OF THIS NOTICE.

NOTICE TO THE UNKNOWN CREDITORS
OF
SMOKE TOBACCO, LLC

You are hereby notified that on November 26, 2012, Smoke Tobacco, LLC, a Missouri limited liability company (the "Company"), the principal office of which is located in St. Louis City, Missouri, filed a Notice of Winding Up with the Secretary of State of Missouri.

In order to file a claim with the Company, you must furnish the amount and the basis for the claim and provide all necessary documentation supporting this claim. All claims must be mailed no later than February 28, 2012 to:

William R. Shelton
C/O Capes, Sokol, Goodman & Sarachan, PC
7701 Forsyth Boulevard, Twelfth Floor
St. Louis, MO 63105
Attention: Douglas S. Dove, Esq.

The claim will barred if not received by the deadline specified above.

Further, a claim against Smoke Tobacco, LLC will be barred unless a proceeding to enforce the claim is commenced within three years after the publication of this notice.

This cumulative table gives you the latest status of rules. It contains citations of rulemakings adopted or proposed after deadline for the monthly Update Service to the *Code of State Regulations*, citations are to volume and page number in the *Missouri Register*, except for material in this issue. The first number in the table cite refers to the volume number or the publication year—37 (2012) and 38 (2013). MoReg refers to *Missouri Register* and the numbers refer to a specific *Register* page, R indicates a rescission, W indicates a withdrawal, S indicates a statement of actual cost, T indicates an order terminating a rule, N.A. indicates not applicable, RAN indicates a rule action notice, RUC indicates a rule under consideration, and F indicates future effective date.

Rule Number	Agency	Emergency	Proposed	Order	In Addition
	OFFICE OF ADMINISTRATION				
1 CSR 10	State Officials' Salary Compensation Schedule				37 MoReg 1859
1 CSR 10-15.010	Commissioner of Administration	This Issue	This Issue		
	DEPARTMENT OF AGRICULTURE				
2 CSR 30-2.020	Animal Health		37 MoReg 907	37 MoReg 1609W	
		37 MoReg 1699	37 MoReg 1762		
2 CSR 30-10.010	Animal Health	This Issue	This Issue		
2 CSR 70-10.025	Plant Industries		37 MoReg 1141		
2 CSR 70-10.075	Plant Industries		37 MoReg 1141		
2 CSR 70-11.070	Plant Industries	37 MoReg 1637	37 MoReg 1640		
2 CSR 80-3.010	State Milk Board		37 MoReg 1296	37 MoReg 2320	
2 CSR 80-3.020	State Milk Board		37 MoReg 1296	37 MoReg 2320	
2 CSR 80-3.030	State Milk Board		37 MoReg 1297	37 MoReg 2320	
2 CSR 80-3.040	State Milk Board		37 MoReg 1297	37 MoReg 2320	
2 CSR 80-3.050	State Milk Board		37 MoReg 1297	37 MoReg 2321	
2 CSR 80-3.060	State Milk Board		37 MoReg 1298	37 MoReg 2321	
2 CSR 80-3.070	State Milk Board		37 MoReg 1298	37 MoReg 2321	
2 CSR 80-3.080	State Milk Board		37 MoReg 1300	37 MoReg 2321	
2 CSR 80-3.090	State Milk Board		37 MoReg 1300	37 MoReg 2321	
2 CSR 80-3.100	State Milk Board		37 MoReg 1301	37 MoReg 2321	
2 CSR 80-3.110	State Milk Board		37 MoReg 1301	37 MoReg 2322	
2 CSR 80-3.120	State Milk Board		37 MoReg 1301	37 MoReg 2322	
2 CSR 80-3.130	State Milk Board		37 MoReg 1302	37 MoReg 2322	
2 CSR 80-5.010	State Milk Board		37 MoReg 1089	37 MoReg 1609	
2 CSR 80-6.011	State Milk Board		37 MoReg 1302	37 MoReg 2322	
2 CSR 80-6.021	State Milk Board		37 MoReg 1303	37 MoReg 2322	
2 CSR 80-6.041	State Milk Board		37 MoReg 1303	37 MoReg 2322	
2 CSR 90-10	Weights and Measures				37 MoReg 1197
2 CSR 90-10.001	Weights and Measures		37 MoReg 1143	37 MoReg 2323	
2 CSR 90-10.011	Weights and Measures		37 MoReg 1143	37 MoReg 2323	
2 CSR 90-10.012	Weights and Measures		37 MoReg 1144	37 MoReg 2323	
2 CSR 90-10.013	Weights and Measures		37 MoReg 1144	37 MoReg 2323	
2 CSR 90-10.014	Weights and Measures		37 MoReg 1145	37 MoReg 2323	
2 CSR 90-10.020	Weights and Measures		37 MoReg 1148	37 MoReg 2323	
2 CSR 90-10.040	Weights and Measures		37 MoReg 1148	37 MoReg 2324	
2 CSR 90-10.090	Weights and Measures		37 MoReg 1148	37 MoReg 2324	
2 CSR 90-10.120	Weights and Measures		37 MoReg 1149	37 MoReg 2324	
	DEPARTMENT OF CONSERVATION				
3 CSR 10-4.117	Conservation Commission		37 MoReg 1562		
3 CSR 10-5.205	Conservation Commission		37 MoReg 1562		
3 CSR 10-6.415	Conservation Commission		37 MoReg 1563		
3 CSR 10-6.545	Conservation Commission		37 MoReg 1563		
3 CSR 10-8.510	Conservation Commission		37 MoReg 1393	37 MoReg 1858	
3 CSR 10-9.110	Conservation Commission		37 MoReg 1563		
3 CSR 10-9.350	Conservation Commission		37 MoReg 1449		
3 CSR 10-9.560	Conservation Commission		37 MoReg 1449		
3 CSR 10-11.180	Conservation Commission		37 MoReg 1564		
3 CSR 10-11.200	Conservation Commission		37 MoReg 1565		
3 CSR 10-11.205	Conservation Commission		37 MoReg 1566		
3 CSR 10-11.210	Conservation Commission		37 MoReg 1566		
3 CSR 10-11.215	Conservation Commission		37 MoReg 1567		
3 CSR 10-12.110	Conservation Commission		37 MoReg 1567		
3 CSR 10-12.115	Conservation Commission		37 MoReg 1568		
3 CSR 10-12.125	Conservation Commission		37 MoReg 1568		
3 CSR 10-12.140	Conservation Commission		37 MoReg 1569		
3 CSR 10-12.145	Conservation Commission		37 MoReg 1570		
	DEPARTMENT OF ECONOMIC DEVELOPMENT				
4 CSR 240-31.010	Public Service Commission	37 MoReg 1003	37 MoReg 1007	37 MoReg 1649	
4 CSR 240-40.020	Public Service Commission		This Issue		
4 CSR 240-40.030	Public Service Commission		This Issue		
4 CSR 240-40.080	Public Service Commission		This Issue		
	DEPARTMENT OF ELEMENTARY AND SECONDARY EDUCATION				
5 CSR 20-100.255	Division of Learning Services		37 MoReg 1571		
5 CSR 20-100.260	Division of Learning Services		This Issue		
5 CSR 20-200.280	Division of Learning Services		37 MoReg 1766		
5 CSR 20-400.270	Division of Learning Services		This Issue		
5 CSR 20-400.280	Division of Learning Services		37 MoReg 1643		
5 CSR 20-400.310	Division of Learning Services		37 MoReg 1450		
5 CSR 20-400.340	Division of Learning Services		37 MoReg 1453R		

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5 CSR 20-400.420	Division of Learning Services		37 MoReg 1453R		
5 CSR 20-400.440	Division of Learning Services		37 MoReg 1453		
5 CSR 20-500.330	Division of Learning Services		37 MoReg 908	37 MoReg 1609	
5 CSR 20-600.130	Division of Learning Services		37 MoReg 1457		
5 CSR 30-261.025	Division of Financial and Administrative Services		37 MoReg 912	37 MoReg 1609	
	DEPARTMENT OF HIGHER EDUCATION				
6 CSR 10-5.010	Commissioner of Higher Education		37 MoReg 1522		
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7 CSR 10-25.010	Missouri Highways and Transportation Commission				37 MoReg 1652
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10 CSR 10-2.330	Air Conservation Commission		37 MoReg 1769		
10 CSR 10-5.381	Air Conservation Commission		37 MoReg 955	37 MoReg 1610	
10 CSR 10-6.020	Air Conservation Commission		37 MoReg 1222	This Issue	
10 CSR 10-6.070	Air Conservation Commission		37 MoReg 966	37 MoReg 1610	
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10 CSR 100-2.010	Petroleum Storage Tank Insurance Fund Board of Trustees		37 MoReg 1395		
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10 CSR 140-2	Division of Energy				37 MoReg 1062
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11 CSR 45-4.050	Missouri Gaming Commission		37 MoReg 1461R		
11 CSR 45-4.055	Missouri Gaming Commission		37 MoReg 1461		
11 CSR 45-4.190	Missouri Gaming Commission		37 MoReg 1462		
11 CSR 45-4.205	Missouri Gaming Commission		37 MoReg 1462		
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11 CSR 50-3.010	Missouri State Highway Patrol *(Changed from 11 CSR 80-1.010)*		37 MoReg 1467		
11 CSR 50-3.020	Missouri State Highway Patrol *(Changed from 11 CSR 80-2.010)*		37 MoReg 1467		
11 CSR 50-3.030	Missouri State Highway Patrol *(Changed from 11 CSR 80-3.010)*		37 MoReg 1468		
11 CSR 50-3.040	Missouri State Highway Patrol *(Changed from 11 CSR 80-4.010)*		37 MoReg 1468		
11 CSR 50-3.050	Missouri State Highway Patrol *(Changed from 11 CSR 80-7.010)*		37 MoReg 1468		
11 CSR 50-3.060	Missouri State Highway Patrol *(Changed from 11 CSR 80-5.010)*		37 MoReg 1469		
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11 CSR 50-3.080	Missouri State Highway Patrol *(Changed from 11 CSR 80-8.010)*		37 MoReg 1471		
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11 CSR 50-3.100	Missouri State Highway Patrol	37 MoReg 1439	37 MoReg 1472		
11 CSR 80-1.010	Missouri State Water Patrol *(Changed to 11 CSR 50-3.010)*		37 MoReg 1467		
11 CSR 80-2.010	Missouri State Water Patrol *(Changed to 11 CSR 50-3.020)*		37 MoReg 1467		
11 CSR 80-3.010	Missouri State Water Patrol *(Changed to 11 CSR 50-3.030)*		37 MoReg 1468		
11 CSR 80-4.010	Missouri State Water Patrol *(Changed to 11 CSR 50-3.040)*		37 MoReg 1468		
11 CSR 80-5.010	Missouri State Water Patrol *(Changed to 11 CSR 50-3.060)*		37 MoReg 1469		

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11 CSR 80-7.010	Missouri State Water Patrol *(Changed to 11 CSR 50-3.050)*		37 MoReg 1468		
11 CSR 80-8.010	Missouri State Water Patrol *(Changed to 11 CSR 50-3.080)*		37 MoReg 1471		
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12 CSR 10-41.010	Director of Revenue	37 MoReg 1701	37 MoReg 1770		
12 CSR 30-2.015	State Tax Commission		37 MoReg 1473		
12 CSR 30-3.010	State Tax Commission		37 MoReg 1473		
12 CSR 30-3.065	State Tax Commission		37 MoReg 1473		
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13 CSR 70-15.110	MO HealthNet Division	37 MoReg 1132	37 MoReg 1174	37 MoReg 2325	
13 CSR 70-15.160	MO HealthNet Division	37 MoReg 1134	37 MoReg 1178	37 MoReg 2325	
13 CSR 70-15.220	MO HealthNet Division	37 MoReg 1135	37 MoReg 681	37 MoReg 1365	
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16 CSR 10-6.045	The Public School Retirement System of Missouri		37 MoReg 1181	37 MoReg 1650	
16 CSR 10-6.060	The Public School Retirement System of Missouri		37 MoReg 1182	37 MoReg 1650	
16 CSR 20-2.048	Missouri Local Government Employees' Retirement System (LAGERS)		37 MoReg 1533		
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16 CSR 50-10.080	The County Employees' Retirement Fund		37 MoReg 1535		
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19 CSR 25-30.031	State Public Health Laboratory		37 MoReg 1015	37 MoReg 1612	
19 CSR 25-30.041	State Public Health Laboratory		37 MoReg 1024	37 MoReg 1612	
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19 CSR 25-30.080	State Public Health Laboratory		37 MoReg 1040	37 MoReg 1614	
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19 CSR 30-40.720	Division of Regulation and Licensure		37 MoReg 1891		
19 CSR 30-40.730	Division of Regulation and Licensure		37 MoReg 1907		
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20 CSR	Applied Behavior Analysis Maximum Benefit				37 MoReg 472

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20 CSR	Sovereign Immunity Limits				37 MoReg 62 This Issue
20 CSR	State Legal Expense Fund Cap				36 MoReg 192 37 MoReg 62 This Issue
20 CSR 2010-2.005	Missouri State Board of Accountancy		37 MoReg 1399	This Issue	
20 CSR 2010-2.061	Missouri State Board of Accountancy		37 MoReg 1304	37 MoReg 2325	
20 CSR 2010-3.010	Missouri State Board of Accountancy		37 MoReg 1400	This Issue	
20 CSR 2010-3.060	Missouri State Board of Accountancy		37 MoReg 1400	This Issue	
20 CSR 2010-4.010	Missouri State Board of Accountancy		37 MoReg 1307	37 MoReg 2325	
20 CSR 2010-5.070	Missouri State Board of Accountancy		37 MoReg 1400	This Issue	
20 CSR 2030-4.055	Missouri Board for Architects, Professional Engineers, Professional Land Surveyors, and Landscape Architects		37 MoReg 1307	37 MoReg 2326	
20 CSR 2030-6.015	Missouri Board for Architects, Professional Engineers, Professional Land Surveyors, and Landscape Architects		37 MoReg 1312	37 MoReg 2326	
20 CSR 2030-11.015	Missouri Board for Architects, Professional Engineers, Professional Land Surveyors, and Landscape Architects		37 MoReg 1316	37 MoReg 2326	
20 CSR 2110-2.120	Missouri Dental Board		37 MoReg 1318R 37 MoReg 1318	This IssueR This Issue	
20 CSR 2110-2.130	Missouri Dental Board		37 MoReg 1325	This Issue	
20 CSR 2110-2.170	Missouri Dental Board	37 MoReg 1291	37 MoReg 1331	This Issue	
20 CSR 2110-4.010	Missouri Dental Board		37 MoReg 1336R 37 MoReg 1336	This IssueR This Issue	
20 CSR 2110-4.020	Missouri Dental Board		37 MoReg 1338R 37 MoReg 1338	This IssueR This Issue	
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20 CSR 2110-4.040	Missouri Dental Board		37 MoReg 1349	This Issue	
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20 CSR 2220-6.100	State Board of Pharmacy		37 MoReg 2286		
20 CSR 2231-1.010	Division of Professional Registration		37 MoReg 1357	37 MoReg 2326	
20 CSR 2231-2.010	Division of Professional Registration		37 MoReg 1357	37 MoReg 2326	
20 CSR 2245-1.010	Real Estate Appraisers		37 MoReg 2299		
20 CSR 2245-2.010	Real Estate Appraisers		37 MoReg 2299		
20 CSR 2245-3.001	Real Estate Appraisers		37 MoReg 2299		
20 CSR 2245-3.005	Real Estate Appraisers		37 MoReg 2300		
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20 CSR 2245-10.040	Real Estate Appraisers		37 MoReg 2318		
20 CSR 2250-2.040	Missouri Real Estate Commission		37 MoReg 1358	37 MoReg 2326	
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20 CSR 2270-2.072	Missouri Veterinary Medical Board		37 MoReg 1605		
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22 CSR 10-2.045	Health Care Plan	37 MoReg 1715	37 MoReg 1794		
22 CSR 10-2.051	Health Care Plan	37 MoReg 1716	37 MoReg 1795		
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22 CSR 10-2.053	Health Care Plan	37 MoReg 1717	37 MoReg 1796		
22 CSR 10-2.054	Health Care Plan		37 MoReg 1800		
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22 CSR 10-2.060	Health Care Plan	37 MoReg 1724	37 MoReg 1808		
22 CSR 10-2.070	Health Care Plan	37 MoReg 1726	37 MoReg 1809		
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22 CSR 10-2.091	Health Care Plan	37 MoReg 1732R	37 MoReg 1818R		
22 CSR 10-2.094	Health Care Plan	37 MoReg 1440	37 MoReg 1474		
22 CSR 10-2.110	Health Care Plan	37 MoReg 1441	37 MoReg 1477		
22 CSR 10-2.120	Health Care Plan	37 MoReg 1446	37 MoReg 1484		
22 CSR 10-2.130	Health Care Plan	37 MoReg 1732	37 MoReg 1818		
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22 CSR 10-3.020	Health Care Plan	37 MoReg 1736R 37 MoReg 1736	37 MoReg 1823R 37 MoReg 1823		
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22 CSR 10-3.045	Health Care Plan	37 MoReg 1743	37 MoReg 1834		
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22 CSR 10-3.054	Health Care Plan	37 MoReg 1745	37 MoReg 1836		
22 CSR 10-3.055	Health Care Plan	37 MoReg 1746	37 MoReg 1836		

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22 CSR 10-3.056	Health Care Plan	37 MoReg 1747	37 MoReg 1837		
22 CSR 10-3.057	Health Care Plan	37 MoReg 1748	37 MoReg 1838		
22 CSR 10-3.060	Health Care Plan	37 MoReg 1754	37 MoReg 1846		
22 CSR 10-3.070	Health Care Plan	37 MoReg 1755	37 MoReg 1847		
22 CSR 10-3.075	Health Care Plan	37 MoReg 1756	37 MoReg 1847		
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22 CSR 10-3.090	Health Care Plan	37 MoReg 1758	37 MoReg 1850		
22 CSR 10-3.130	Health Care Plan	37 MoReg 1761	37 MoReg 1856		

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Office of Administration				
Commissioner of Administration				
1 CSR 10-15.010	Cafeteria Plan	This Issue	Jan. 1, 2013	June 29, 2013
Department of Agriculture				
Animal Health				
2 CSR 30-2.020	Movement of Livestock, Poultry, and Exotic Animals Within Missouri	37 MoReg 1699	Nov. 8, 2012	May 6, 2013
2 CSR 30-10.010	Inspection of Meat and Poultry	This Issue	Jan. 1, 2013	June 29, 2013
Plant Industries				
2 CSR 70-11.070	Pine Shoot Beetle Intrastate Quarantine	37 MoReg 1637	Oct. 12, 2012	April 9, 2013
Department of Economic Development				
Public Service Commission				
4 CSR 240-31.010	Definitions	37 MoReg 1003	June 1, 2012	Feb. 28, 2013
Department of Public Safety				
Missouri State Highway Patrol				
11 CSR 50-3.100	Nonresident Temporary Boater Identification Certificate	37 MoReg 1439	Sept. 14, 2012	March 12, 2013
Department of Revenue				
Director of Revenue				
12 CSR 10-41.010	Annual Adjusted Rate of Interest	37 MoReg 1701	Jan. 1, 2013	June 29, 2013
Elected Officials				
Treasurer				
15 CSR 50-4.030	Missouri MOST 529 Matching Grant Program	37 MoReg 731	April 15, 2012	Jan. 23, 2013
Department of Insurance, Financial Institutions and Professional Registration				
Missouri Dental Board				
20 CSR 2110-2.170	Fees	37 MoReg 1291	Aug. 5, 2012	Feb. 28, 2013
State Board of Pharmacy				
20 CSR 2220-4.010	General Fees	37 MoReg 1221	July 31, 2012	Feb. 28, 2013
State Committee for Social Workers				
20 CSR 2263-1.040	School Social Worker Examinations Approved by the Committee	37 MoReg 1561	Sept. 28, 2012	March 26, 2013
Missouri Consolidated Health Care Plan				
Health Care Plan				
22 CSR 10-2.010	Definitions	37 MoReg 1701	Jan. 1, 2013	June 29, 2013
22 CSR 10-2.020	General Membership Provisions	37 MoReg 1702	Jan. 1, 2013	June 29, 2013
22 CSR 10-2.020	General Membership Provisions	37 MoReg 1702	Jan. 1, 2013	June 29, 2013
22 CSR 10-2.045	Plan Utilization Review Policy	37 MoReg 1715	Jan. 1, 2013	June 29, 2013
22 CSR 10-2.051	PPO 300 Plan Benefit Provisions and Covered Charges	37 MoReg 1716	Jan. 1, 2013	June 29, 2013
22 CSR 10-2.052	PPO 600 Plan Benefit Provisions and Covered Charges	37 MoReg 1717	Jan. 1, 2013	June 29, 2013
22 CSR 10-2.053	High Deductible Health Plan Benefit Provisions and Covered Charges	37 MoReg 1717	Jan. 1, 2013	June 29, 2013
22 CSR 10-2.055	Medical Plan Benefit Provisions and Covered Charges	37 MoReg 1719	Jan. 1, 2013	June 29, 2013
22 CSR 10-2.060	PPO 300 Plan, PPO 600 Plan, and HDHP Limitations	37 MoReg 1724	Jan. 1, 2013	June 29, 2013
22 CSR 10-2.070	Coordination of Benefits	37 MoReg 1726	Jan. 1, 2013	June 29, 2013
22 CSR 10-2.075	Review and Appeals Procedure	37 MoReg 1727	Jan. 1, 2013	June 29, 2013
22 CSR 10-2.090	Pharmacy Benefit Summary	37 MoReg 1729	Jan. 1, 2013	June 29, 2013
22 CSR 10-2.091	Wellness Program Coverage, Provisions, and Limitations	37 MoReg 1732	Jan. 1, 2013	June 29, 2013
22 CSR 10-2.094	Tobacco-Free Incentive Provisions and Limitations	37 MoReg 1440	Oct. 1, 2012	March 29, 2013
22 CSR 10-2.110	General Foster Parent Membership Provisions	37 MoReg 1441	Oct. 1, 2012	March 29, 2013
22 CSR 10-2.120	Wellness Program	37 MoReg 1446	Oct. 1, 2012	March 29, 2013
22 CSR 10-2.130	Additional Plan Options	37 MoReg 1732	Jan. 1, 2013	June 29, 2013

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22 CSR 10-3.010	Definitions	37 MoReg 1733	Jan. 1, 2013	June 29, 2013
22 CSR 10-3.020	General Membership Provisions	37 MoReg 1736	Jan. 1, 2013	June 29, 2013
22 CSR 10-3.020	General Membership Provisions	37 MoReg 1736	Jan. 1, 2013	June 29, 2013
22 CSR 10-3.045	Plan Utilization Review Policy	37 MoReg 1743	Jan. 1, 2013	June 29, 2013
22 CSR 10-3.053	PPO 1000 Plan Benefit Provisions and Covered Charges	37 MoReg 1744	Jan. 1, 2013	June 29, 2013
22 CSR 10-3.054	PPO 2000 Plan Benefit Provisions and Covered Charges	37 MoReg 1745	Jan. 1, 2013	June 29, 2013
22 CSR 10-3.055	High Deductible Health Plan Benefit Provisions and Covered Charges	37 MoReg 1746	Jan. 1, 2013	June 29, 2013
22 CSR 10-3.056	PPO 600 Plan Benefit Provisions and Covered Charges	37 MoReg 1747	Jan. 1, 2013	June 29, 2013
22 CSR 10-3.057	Medical Plan Benefit Provisions and Covered Charges	37 MoReg 1748	Jan. 1, 2013	June 29, 2013
22 CSR 10-3.060	PPO 600 Plan, PPO 1000 Plan, PPO 2000 Plan, and HDHP Limitations	37 MoReg 1754	Jan. 1, 2013	June 29, 2013
22 CSR 10-3.070	Coordination of Benefits	37 MoReg 1755	Jan. 1, 2013	June 29, 2013
22 CSR 10-3.075	Review and Appeals Procedure	37 MoReg 1756	Jan. 1, 2013	June 29, 2013
22 CSR 10-3.090	Pharmacy Benefit Summary	37 MoReg 1758	Jan. 1, 2013	June 29, 2013
22 CSR 10-3.130	Additional Plan Options	37 MoReg 1761	Jan. 1, 2013	June 29, 2013

Executive Orders	Subject Matter	Filed Date	Publication
	2012		
12-10	Advises that state offices will be closed on Friday November 23, 2012.	Nov. 2, 2012	37 MoReg 1639
12-09	Extends Executive Order 12-08 in order to extend the deadline for completion of approved projects under the Emergency Cost-Share Program and establishes a Program Audit and Compliance Team to inspect a sample of completed projects. It also extends Executive Order 12-07 until Nov. 15, 2012.	Sept. 10, 2012	37 MoReg 1519
12-08	Authorizes the State Soil and Water Districts Commission to implement an emergency cost-share program to address water challenges to landowners engaged in livestock or crop production due to the current drought. Additionally, it establishes the Agriculture Water Resource Technical Review Team.	July 23, 2012	37 MoReg 1294
12-07	Declares a state of emergency, directs the Missouri State Emergency Operations Plan be activated, and extends Executive Order 12-06 to Oct. 1, 2012, in response to the severe heat, dry conditions, and fire risks affecting the state.	July 23, 2012	37 MoReg 1292
12-06	Activates the Missouri State Emergency Operations Center and directs the State Emergency Management Agency, State Fire Marshall, Adjutant General, and such other agencies to coordinate with local authorities affected by fire danger due to the prolonged period of record heat and low precipitation	June 29, 2012	37 MoReg 1139
12-05	Extends Executive Orders 11-06, 12-03, 11-07, 11-11, 11-14, and 12-04 until June 1, 2012	March 13, 2012	37 MoReg 569
12-04	Activates the state militia in response to severe weather that began on February 28, 2012	Feb. 29, 2012	37 MoReg 503
12-03	Declares a state of emergency and directs that the Missouri State Emergency Operations Plan be activated due to the severe weather that began on February 28, 2012	Feb. 29, 2012	37 MoReg 501
12-02	Orders the transfer of all authority, powers, and duties of all remaining audit and compliance responsibilities relating to Medicaid Title XIX, SCHIP Title XXI, and Medicaid Waiver programs from the Dept. of Health and Senior Services and the Dept. of Mental Health to the Dept. of Social Services effective Aug. 28, 2012, unless disapproved within sixty days of its submission to the Second Regular Session of the 96th General Assembly	Jan. 23, 2012	37 MoReg 313
12-01	Designates members of the governor's staff to have supervisory authority over certain departments, divisions, and agencies	Jan. 23, 2012	37 MoReg 311

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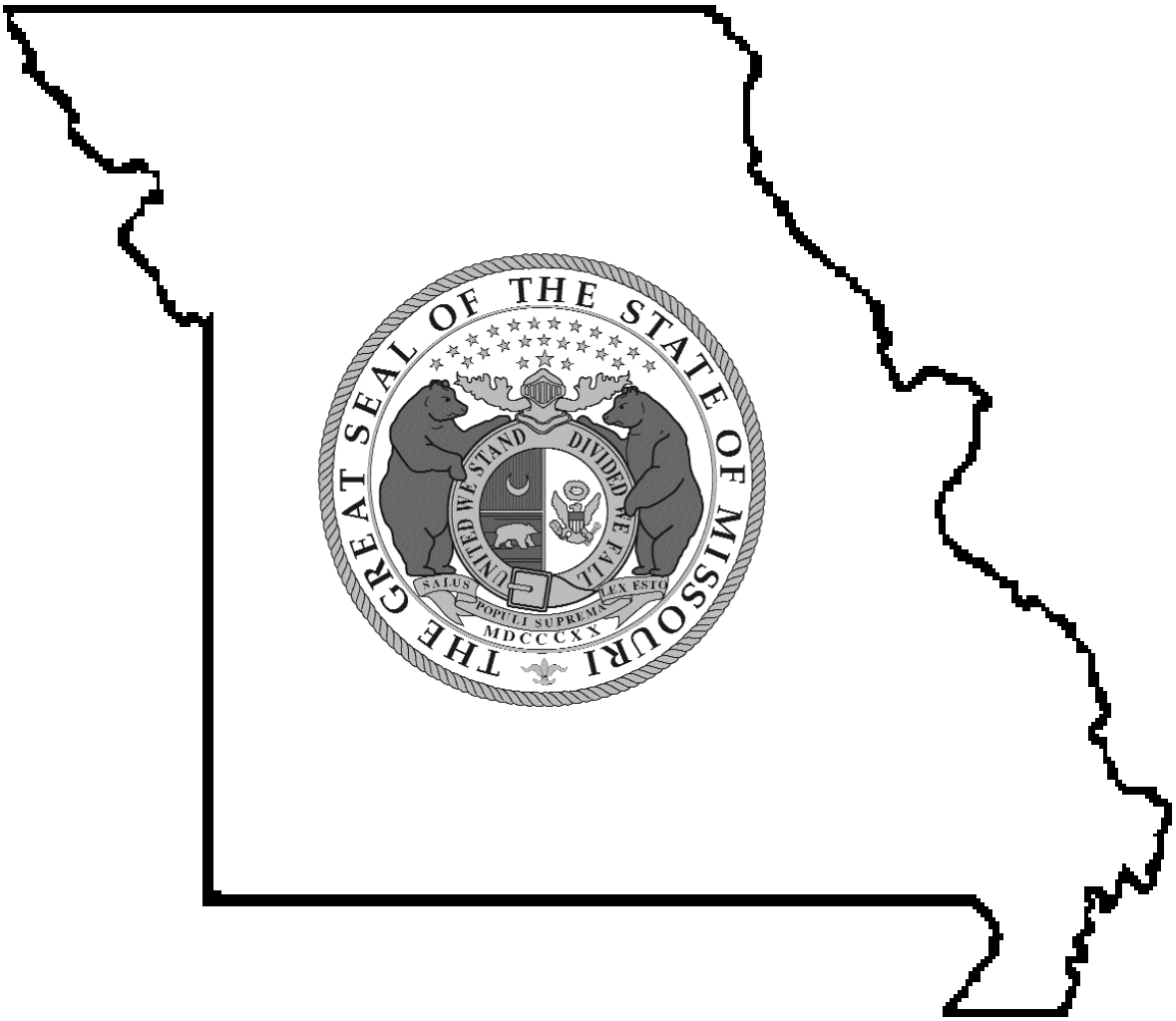
RULEMAKING 1-2-3

DRAFTING AND STYLE MANUAL



ROBIN CARNAHAN
SECRETARY OF STATE

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Administrative Rules Contact Information

General Inquiries
(573) 751-4015
rules@sos.mo.gov

Waylene Hiles, Director
(573) 751-1869
waylene.hiles@sos.mo.gov

Curtis W. Treat, Editor
(573) 751-2022
curtis.treat@sos.mo.gov

Sally Reid, Editor
(573) 522-2593
sally.reid@sos.mo.gov

Delane Jacquin, Assoc. Editor
(573) 751-1818
delane.jacquin@sos.mo.gov

Michael C. Risberg, Specialist
(573) 522-2196
michael.risberg@sos.mo.gov

Jacqueline D. White, Publications
(573) 526-1259
jacqueline.white@sos.mo.gov

Alisha Dudenhoeffer, Administrative Assistant
(573) 751-4015
alisha.dudenhoeffer@sos.mo.gov